Supreme Court, U.S.
FILED

No. 10-139

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IN THE

Supreme Court of the United States

GRAZYNA H. CHRISTMAN,
Petitioner

v.

UTICA NATIONAL INSURANCE GROUP, INC.,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Second Circuit affirmed the District Court's grant of summary judgment to Utica National, dismissing entirely Christman's claims of gender, age and disability discrimination in violation of Title VII, ADEA and ADA, respectively, and ruled that she failed to establish a *prima facie* case of discrimination and show the employer's proffered reason because of poor job performance to be pretextual.

Three questions are presented:

1. Whether the lower courts overstepped their authority as gatekeepers by ruling that Christman's evidence was insufficient to satisfy the *McDonnell Douglas* burden shifting test of gender discrimination under Title VII and age discrimination under ADEA in order to withstand a summary judgment motion?

2. Whether in ADEA discrimination case, an employer can prevail at the summary judgment stage by articulating a defense under the *McDonnell Douglas* method where the replacement employee was not hired until seven months after the adverse employment action?

3. Whether in Title VII gender discrimination case an employer can escape liability where evidence shows that the employer disciplined a male employee less severely for conduct which was more egregious than that of a female employee?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF APPENDICES iv

TABLE OF CITED AUTHORITIES xiii

OPINION BELOW 1

STATEMENT OF JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE PETITION ... 6

I. Introduction 6

A. The review of record reveals the following 6

B. The Reinsurance Accountants were treated differently in terms of their discipline, training and recognition ... 19

C. When Evolo terminated Christman's employment because of her allegedly poor job performance, he concurrently signed off on the financial statements she finalized that morning 25

Contents

Page

II. This Court's supervisory powers are needed to resolve whether the summary judgment grant to UNIG was appropriate where Christman produced the evidence showing a falsity of employer's proffered reason and raising a genuine issue as to whether this proffered reason was not the employer's true reason 27

III. This Court's supervisory powers are needed to determine whether an employer can successfully articulate a defense under *McDonnell Douglas* method where the replacement employee was not hired until seven or more months after discharge 32

IV. This Court's supervisory powers are needed to resolve a conflict between the Circuit Courts whether an employer can escape liability under Title VII where the evidence shows that a female employee was disfavored while similarly situated, male employees were receiving the preferential treatment 34

CONCLUSION 39

TABLE OF APPENDICES

Page

APPENDIX A – Summary Order of the United States Court of Appeal for the Second Circuit Decided April 29, 2010 . . . . . 1a

APPENDIX B – Decision and Order of the United States District Court, Northern District of New York Filed April 6, 2009 . . . . . 6a

APPENDIX C – Relevant Statutes 29a

APPENDIX D – Additional Material 31a

Case 09-1385-cv-DJ-JMM-RDS
U.S. Court of Appeals for the Second Circuit
Brief for Defendant-Appellee, p.1 Filed 08/07/09 31a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 02/22/05 Termination Letter
Exhibit 43 . . . . . 32a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff Employee of UNIG not UMICO
Exhibit 99, p.2-4 . . . . . 35a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant's 04/27/05 Job Posting Exhibit 94 39a

Appendices

Page

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
SDHR 04/13/05 Verified Complaint Exhibit 47,
p.1 . . . . . 42a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 46-2
Motion for Sanctions against Defendant's
Counsel Filed 07/31/08 Stefan E. Berg, Esq.,
Retainer Agreement Attachment No.2, p.4 . . . 43a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 46-2
Motion for Sanctions against Defendant's
Counsel Filed 07/31/08 12/22/07 Letter from
Stefan E. Berg, Esq. Attachment No.4 . . . . . 44a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-1
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 01/29/02 Memo Exhibit 6 . . . . . 46a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13 . . . . . 50a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Errata to Transcript Christman Exhibit 14 . . 109a

Appendices

Page

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 49-3
Plaintiff's Opposition to Defendant's Cross-Motion for Protective and Confidentiality Order Filed 09/02/08 Defendant's Termination Notes Exhibit 109 ..... 112a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 02/04/05 Memo Exhibit 81 ..... 114a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Comparison 1999-2004 Accountant I Ratings Exhibit 15 ..... 117a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 05/11/04 Memo Exhibit 28 ..... 120a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant I - 2004 Review Exhibit 17, p.2-3,5 126a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Performance Improvements Exhibit 100 .... 133a

Appendices

Page

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 02/17/05 Email Exhibit 93, p.1 . . . 147a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-7
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 02/19/05 Email Exhibit 69 . . . . . 149a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 01/06/05 Memo Exhibit 34 . . . . . 152a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
SDHR Rebuttal-Plaintiff Sick & Overtime, p.21
Exhibit 87 . . . . . 158a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-6
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Evolo, Excerpts
Exhibit 55 . . . . . 161a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 12/04/02 Email Exhibit 76 . . . . . 169a

Appendices

Page

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant II – 2004 review Exhibit 22, p.1-2, 4,6 . . . . . 170a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Harrison InnerView Test Exhibit 75, p.1-5 . . . . . 179a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 2003 Merit Exhibit 71 . . . . . 186a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 02/18/05 Email Exhibit 78 . . . . . 188a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 01/22/05, 01/19/05 & 08/05/04 Emails, Exhibit 79, p.1-3 . . . . . 190a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 09/18/03 & 04/23/02 Emails Exhibit 80 194a

Appendices

Page

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Discipline Exhibit 74 . . . . . 199a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant II-2003 Review Exhibit 23, p.1,6,9 203a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Austin, Excerpts
Exhibit 35 . . . . . 208a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 02/11/05 Email Exhibit 42 . . . . . 215a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 09/20/04 Email Exhibit 33 . . . . . 217a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Reply 2004 Review, pp.1-2,59 Exhibit 31 . . . . 222a

Appendices

Page

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendants JPWoods Managers Meeting
Exhibit 73 ..... 225a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Sr Accountant-2004 Review Exhibit 25, p.2,6 228a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Sr Accountant-2005 Review Exhibit 24, p.7 .. 233a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant ARe Designation Exhibit 88, p.1-2,
4-7 ..... 235a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Sr Accountant 2003 Promotion
Exhibit 72, p.3 ..... 243a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Sr Accountant-2003 Review Exhibit 26, p.2,6 245a

Appendices

Page

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Leader's Guide: Performance Exhibit 27, p.5-6 249a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Unlawful Harassment Exhibit 82, p.1. . . . . 254a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 10/22/04 & 11/04/04 Emails
Exhibit 85, p.1-2 . . . . . 255a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 06/28/05 Email Exhibit 46 . . . . . 258a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant SDHR Extension Request Letters
Exhibit 49, p.3 . . . . . 260a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Ambiguous Emails Exhibit 90, p.1-3,
8 . . . . . 262a

Appendices

Page

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-7
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Accountant I Job Class 9
Description Exhibit 65, p.1 . . . . . 271a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-7
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Accountant II Job Class 11
Description Exhibit 66, p.1 . . . . . 273a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 49-3
Plaintiff's Opposition to Defendant's Cross-
Motion for Protective and Confidentiality Order
Filed 09/02/08 Defendant 02/21/05 Email
Exhibit 110 . . . . . 275a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 49-3
Plaintiff's Opposition to Defendant's Cross-
Motion for Protective and Confidentiality Order
Filed 09/02/08 Defendant's 02/21/05 US
Treasury, p.5 Exhibit 111 . . . . . 276a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 49-3
Plaintiff's Opposition to Defendant's Cross-
Motion for Protective and Confidentiality Order
Filed 09/02/08 Defendant's 11/01/07 Email
Exhibit 112 . . . . . 279a

2006 The Older Worker Advantage, Excerpts 282a

TABLE OF CITED AUTHORITIES

Page

Cases

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986) 29, 31

Carter v. Decisionone Corp., 122 F.3d 997 (11th Cir. 1997) 33

Celotex Corp. v. Catrett, 477 U.S. 317 (1986) 29, 30

Gallo v. Prudential Residential Servs., Ltd. Partnership, 22 F.3d 1219 (2nd Cir.1994) 30

Hazen Paper Co. v. Biggins, 507 U.S. 604 (1993) 32

Jacob v. New York City, 315 U.S. 752 (1942) 32

Lynn v. Deaconess Med. Ctr.-West Campus, 160 F.3d 484 (8th Cir. 1998) 37, 38

McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) 27, 32, 33, 38

O'Connor v. Consolidated Coin Operator's Corp., 517 U.S. 308 (1996) 32, 33

St. Mary's Honor Center v. Hicks, 509 U. S. 502 31

Whittington v. Nordam Group Inc., 429 F.3d 986 (10th Cir. 2005) 33

Cited Authorities

Page

Statutes & Authorities

U.S. Constitution: Seventh Amendment 3, 32

28 U.S.C. § 1254(1) 1

29 U.S.C. §621 *et seq.* 2, 3, 6, 32, 33

42 U.S.C. §2000e *et seq.* 1, 2, 3, 6, 34

F.R.C.P. Rule 11(b) 5, 28

F.R.C.P. Rule 56(c)(e)(f) 5, 29, 30

NY State Executive Law (Human Rights Law) 4

Other Citations

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OPINION BELOW

The Summary Order of the United States Court of Appeals for the Second Circuit is reproduced in the Appendix A. The order is unpublished. On April 29, 2010, the Second Circuit affirmed the Decision and Order of the United States District Court for the Northern District of New York dated March 27, 2009; the Judgment was filed on April 6, 2009. The Decision is reproduced in the Appendix B. The Petitioner did not receive the Summary Order from the Second Circuit until June 3, 2010; therefore, no petition for rehearing has been filed timely with the Court of Appeals.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

The Second Circuit Summary Order was filed on April 29, 2010. *See* Appendix A. The Mandate was issued on June 8, 2010. The Petition for Writ of Certiorari seeking review of the lower court's order is filed within 90 days after entry of the order.

STATUTORY PROVISIONS INVOLVED

42 U.S.C. §2000e-2 Unlawful employment practices

(a) **Employer practices**
It shall be an unlawful employment practice for an employer—
(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of

such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(d) **Training programs**

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.* App.C-29a.

29 U.S.C. §623 Prohibition of age discrimination

(a) **Employer practices**

It shall be unlawful for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of

such individual's age; or
(3) to reduce the wage rate of any employee in order to comply with this chapter.

Age Discrimination in Employment Act, 29 U.S.C. §621 *et seq.* App.C-30a.

Seventh Amendment - Civil Trials

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

U.S. Constitution: Seventh Amendment. App.C-29a.

STATEMENT OF THE CASE

Grazyna H. Christman ("Christman") seeks review of the Second Circuit Summary Order that affirmed the District Court's grant of summary judgment in favor of Utica National Insurance Group, Inc. ("UNIG"). The Court found Christman's arguments related to employment termination in violations of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §2000e *et seq.* and the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §621 *et seq.*, "to be without merit." App.A-5a.

This Petition addresses whether an employer can escape liability under Title VII and ADEA, where there is evidence that the older female employee was disfavored while similarly situated, substantially younger, male employees were receiving a preferential treatment, and the employer's proffered

allegedly non-discriminatory reason for the adverse action is unworthy the credence.

UNIG [1] terminated Christman's employment on February 21, 2005. In April 2005, Christman filed a Verified Complaint with the State Division of Human Rights ("SDHR"), App.D-42a about UNIG's unlawful discriminatory employment practice in violation of the New York Human Rights Law because of age, sex and disability.

In December 2005, Christman retained Stefan D. Berg, Esq. App.D-43a. Mr. Berg filed the Complaint with the District Court in November 2006. (Dkt. No. 1, 11/16/06) After his questionable withdrawal of counsel, Christman became Plaintiff

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[1] Counsel for Defendant-Appellee maintains that Christman was "a former employee of Utica Mutual Insurance Company" and that "Plaintiff-Appellant erroneously denominated Defendant-Appellee as Utica National Insurance Group, Inc." App.D-31a. But Petitioner wishes to direct the Court's attention to the following documents indicating otherwise: (1) Letter from Nina H. Owens "to confirm the termination of [Christman's] employment and [her] employee benefits with the Utica National effective February 21, 2005." App.D-32a. (2) Letter from Clarke Peterson recognizing that "[her] employment anniversary will represent a milestone for [her] in [her] career at Utica National." App.D-35a. (3) Email from Award Center: "Happy Anniversary! Thank you for your 15 years of service with Utica National Insurance Group!" App.D-37a. (4) Confirmation of award selection: "Congratulations, Grazyna H. Christman, on your 15 Year achievement with Utica National Insurance Group!" App.D-38a, and (7) Christman's job posting – "Reinsurance Accountant" with "Utica National Insurance Group" located at "Home Office, 180 Genesee Street, New Hartford, New York 13413-2299." App.D-39a-40a.

pro se in February 2008. [2] (Dkt. No. 20, 02/08/08).

In May 2008, Christman responded to Defendant's motion for summary judgment (Dkt. Nos. 39 and 40, 05/28/08), and same day filed the F.R.C.P. Rule 56 motion for a continuance to conduct discovery. (Dkt. No. 38, 05/28/08.) In July 2008, Christman filed a motion for sanctions against Defendant's attorney for conduct violating the F.R.C.P. Rule 11(b). (Dkt. No. 46, 07/31/08.). In response, Defendant filed a cross-motion for protective and confidentiality orders in August 2008 (Dkt. No. 47, 08/08/08) and a second motion for protective order in September 2008 (Dkt. No. 52, 09/12/08.) In October 2008, the case was reassigned from Honorable Judge David N. Hurd to Judge Glenn T. Suddaby. (Dkt. No. 56, 10/02/08.) In November 2008, Christman filed two motions to compel disclosure of personnel records and cross-motion for sanctions. (Dkt. Nos. 63 and 64, 11/04/08, respectively). In March 2009, the District Court issued its Decision and Order, App.B-6a-28a granting summary judgment to UNIG and dismissing entirely Christman's claims. In April 2009, Christman filed an appeal with the Court of Appeals for the Second Circuit.

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[2] In 2007, Mr. Berg deposed Defendant on November 7th and 8th; sent a $7,500.00 bill on November 15th and on December 22nd, a letter, App.D-44a-45a that Christman had no case. From December 24, 2007 to January 22, 2008, Christman sought an explanation as to his demands to settle for under $10,000.00. For complete documentation, *see* (Dkt. No. 46, 07/31/08).

REASONS FOR GRANTING THE PETITION

The Court's supervisory powers are needed to prevent employers nationwide from escaping liability to the innocent victims of adverse employment actions in violation of the Labor Laws. Absent the Court's exercise of its supervisory powers to reverse the Second Circuit's decision, courthouse doors across the country will be closed to a host of victimized employees who are within the protected class and rely on defenses offered by the Title VII and ADEA.

I. Introduction

A. The review of record reveals the following:

Christman would have celebrated fifteen (15) years with UNIG in 2005. App.D-35a,38a. In 2002, she was moved to a newly created Reinsurance Department. App.D-46a-49a. Michael Evolo ("Evolo") become supervisor, App.D-48a and began overseeing three accountants: [3] Grazyna Christman, Accountant I, Josh Watkins ("Watkins"), Accountant II and David Raga ("Raga"), Senior Accountant. App. D-63a. Christman, who was the only female accountant supervised by Evolo, App.D-53a turned fifty in 2002. App.D-60a. Watkins and Raga were in

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[3] In November 2007, Christman testified that "[t]he accounting position had three different levels. The lowest was Accountant I, and the responsibility of the Accountant I was to somewhat work with other help, but the Accountant I wasn't responsible for entirely finishing on its own the financial statements. The Accountant I was supposed to get help and training and coaching from Senior Accountant and Accountant II." App.D-79a-80a; *see* also App.D-68a,271a,274a.

the twenties and thirties, respectively. UNIG terminated Christman's employment alleging poor job performance. On February 21, 2005, Evolo noted:

> Purpose of the meeting [in HR] was to terminate ... Grazyna [Christman]'s employment at Utica National. I reviewed the lack of noticeable improvement in her performance since the meeting Dane and I had with her on January 6, 2005. I mentioned that Year End processing was a critical time for us and that there were a number of instances where she provided incorrect accounting information to others and that these errors were unacceptable and below standard. (4) I went on to say that I gave her every opportunity to improve her performance and that she has not done so. I wrapped up my conversation by saying that we reviewed her lack of performance with HR and that we decided to terminate her employment immediately and that the decision was final. Grazyna handed out what

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(4) In 2005, UNIG apparently scrambled for Christman's errors, when it stated: "following [SDHR] Complainant's termination of employment in February 2005, Mr. Evolo discovered additional errors made by Complainant's during her employment with the Company." In 2007 deposition, Christman testified: "(...) those statements were made after [she] was fired, because the memo is dated June 28th and looks like it's an e-mail sent to Nina Owens[,]" who at 10:29 PM forwarded it further. App.D-105a; *see* also App.D-103a-107a. The e-mail's date was only three (3) days away from the third and final deadline for UNIG's SDHR response, App.D-260a-261a and coincidently would have been Christman's 15th Employment Anniversary.

> she claimed was a formal response [5] to our January 6th meeting. In addition, she made some remarks: namely that she has been under tremendous pressure from the work environment; admitted committing some errors; has never received any help from her co-workers; she claimed to have simplified many of her job tasks since coming to Reinsurance Department; and, in the last 30 days she claimed that she completed her job tasks on time [6]. App.D-112a-113a.

Prior to Evolo's supervision, all of Christman's evaluations were meets or exceeds expectations as illustrated in the table comparing her 1999-2004 performance ratings. App.D-117a-119a; *see* also App.D-93a. In 2004, Evolo evaluated Christman's performance in May and July, and rated it as "does not meet." In the nine-month review, Evolo wrote:

> Completion of the Treaty contract settlements or "true-ups" should be a priority. This is of the utmost importance, especially if UMICO is due back $$$. You

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[5] *See* Christman's 02/04/05 Memo App.D-114a-116a.

[6] During deposition in 2007, Christman testified: "[t]he job responsibility entailed specific tasks which were [her] monthly, quarterly or annual responsibility, and the timely completion, the final result. (...) The list wasn't a subject to a change. The tasks on the list were submitted once, and again, if tasks were added." Furthermore, "the last copy that [she] forwarded of the original list was in October 2004. It was right before [her] surgery. Mr. Evolo wanted to know what needed to be done in [her] absence." App.D-78a-79a; *see* also App.D-277a-278a.

> [Christman] did not process the settlements for the 2003 PPR or CEoL until after the JPWoods Account Managers meeting in early March. App.D-121a. (...) You also came perilously close to missing the deadline to file the US Treasury Report, which, had it been filed late [emphasis added], Utica Mutual would have been fined. App.D-120a.

Evolo repeated in the annual review

> Grazyna [Christman] missed a number of deadlines this past year – the 2003 PPR and CEoL treaty contract settlements or "true-ups" ($800K+) were not done in a timely manner (this settlements need to be done quickly especially if Utica is owed money back from reinsurers), (...) Grazyna also came very close to missing the deadline [emphasis added] for submitting the '03 US Treasury Report. App.D-126a; *see* also App.D-85a-86a.

But Christman's alleged oversights were corrected the following year, when she did these annual tasks on time. On January 17, 2005, Christman completed the 2004 PPR and CEoL settlements totaling $837,226.62 owed to Utica Mutual. App.D-133a-144a. Evolo approved them on January 18, 2005. App.D-133a. "[Evolo] expect[ed] that [UNIG's] Treasury items [7] will accompany the FR [Financial Reporting]

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[7] The "US Treasury items" comprised of: Excess of Risks Schedules for Utica and RFI, App.D-151a, Treasury Annual and Other States Schedules F. App.D-149a. Christman completed these items on January 18 and 19, 2005, respectively. App.D-149a; *see* also App.D-278a.

mailing on Tuesday" February 22, 2005 App.D-147a. Christman completed the US Treasury schedule on Saturday, January 19th. App.D-149a.

Evolo also wrote in January 2005 disciplinary memo:

> You [Christman] never sent your 2nd quarter premium account reconciliations to Financial Reporting, as you are required to. This was discovered when Price Waterhouse Coopers asked for them during the week of November 15th. (8) App.D-154a.

But for the 3rd and 4th quarter reconciliations, Christman corrected the alleged oversight. On January 28, 2005, she emailed Rick Semeraro in the Financial Reporting:

> This will confirm that I [Christman] dropped off this afternoon the 4Q04 reconciliations for 2180202, 2180404 and 1442002. App.D-146a.

On November 9, 2004, two (2) days before her surgery, she left the 3rd quarter reconciliations with Raga:

> I [Christman] gave to David [Raga] copies of all [emphasis added] my 3Q04 reconciliations (2180202, 1180202 and 1442002). App.D-145a.

Evolo continued in Christman's disciplinary memo:

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(8) At that time in 2004, Christman was out on medical leave of absence. "The surgery was on November 11th, and [she] was back to work on December 27th." App.D-63a.

> Before you [Christman] left for surgery, I specifically asked you to leave explicit instructions with your co-workers on how to handle your job tasks in your absence. Contrary to what I asked, you did not leave specific directions on where to send the Swiss Re premium reports. There was nothing in your file that specifically addressed premium reports. Your file did have an address, [9] however, we couldn't be sure it wasn't a lockbox address. Not sending this report on time to Swiss Re could [emphasis added] negatively impact our working relationship with them – to the point where it may result in transactional audit or even negatively impact the underwriting rates. App.D-153a-154a.

But Christman did prepare "the notes for both Natalia [Intern] and [Watkins and Raga] - hope[d] [they] find all in order." App.D-145a. On November 4, 2004, she also asked Evolo to clarify his statement that "[she] can delegate responsibility; however, [she] cannot delegate accountability," App.D-256a-257a:

> I [Christman] had explained to Natalia, Josh and David accordingly and to my best ability, what needs to be done in my absence. Please let me know HOW I CAN ASSURE that they understand what needs to be done, so that I

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[9] In her reply to January 6, 2005 disciplinary memo, App. D-114a-116a Christman explained: "(...) Swiss Re address labels for premiums and reserves bordereaux were in the file, along with Pia's [Swiss Re premium contact person] communication, which indicated that reserve reports should be mailed to another person. App.D-115a

> will not be held accountable for their potential errors, when I come back from my disability leave. App.D-256a.

In the nine-month review, Evolo stated the following about Christman's overtime:

> In closing, during year-end processing, your [Christman's] employment at Fleet Bank directly conflicted with your job responsibilities here and prevented you from committing extra time during the week (Monday through Wednesday) as well as on Saturdays during parts of year-end processing. This will not be tolerated so you must decide which position is more important – I expect that your responsibilities here at Utica Mutual will come first. I will not accept the fact that you cannot commit extra time [10] because your work schedule at Fleet will not permit it. This is not just for year-end processing, but any time during the year when additional effort is needed. App.D-125a.

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[10] Under Evolo's supervision, Christman worked the overtime as follows: "1) In 2002-2003 a total of 176.25 overtime hours was entirely allocated to handling of the year-end financial statements to assure their timely processing. It was the first year that [she] had to handle them independently. 2) In 2003-2004 [her] overtime (...) decreased to 101.5 hours thanks to [her] hands on experience from the previous year and knowledge retention. (...) 3) In 2004-2005 [her] total overtime increased to 158.75 hours. [She] worked an additional 32.25 hours in the four weeks immediately preceding [her] November surgery and a total of 118.75 hours from December 27, 2004, the day [she] returned from disability until (...) February 21, 2005

(Cont'd)

Evolo repeated in the 2004 annual review:

> Grazyna [Christman] must understand that she is expected to put in overtime when we need her. Her job at Fleet can not interfere with the Schedule's timeline or any special projects when/if they come up. App.D-130a.

But Evolo's 2007 testimony contradicts his earlier allegations about Christman's lack of overtime commitment:

> Q. On page five, there is a note about overtime, and my recollection is that there were - Grazyna [Christman] has talked to me about one incident where there was overtime to be done and she wanted to do it in the afternoon, I guess after she complete her Bank of America work or Fleet work, and you insisted that she do it in the morning. Do you recall that?
> A. I don't recall that specific incident.
> Q. Was she willing to work overtime if required?
> A. Yes. [Emphasis added] App.D-165a-166a.

In 2007, Evolo testified about Christman's allegedly poor working relationships and communications

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in order to complete a multitude of additional tasks assigned to [her] by Michael [Evolo], as well as other routine year end statements. (...) On February 19, 2005, the last Saturday before [her] dismissal on Monday morning, [she] worked alone until 8:00 PM in the evening to meet the deadlines for: the Other States Schedules F for Massachusetts and Colorado, and the US Department of Treasury Annual Schedule F." App.D-158a-160a

skills:

> Q. Page three, at the top, you said that her "working relationships with her immediate work team have become strained"; am I correct?
> A. That's what I wrote, yes.
> Q. Tell me what you were saying with those words.
> A. Well, I could just sense and see and feel that the working relationship between Grazyna [Christman], Josh [Watkins] and David [Raga] -- and that's the definition of the immediate work team. There were others within the area we were working in – was strained. I could sense that the conversations were short and curt and to the point and had undertones within them. And on a number of occasions, I made Grazyna aware of those. As a supervisor, I was trying to train her or offer assistance on how to recognize those particular situations and how to improve on those. So I could just sense it. I could just see it. I could smell it. I could feel it. It was just there. The undertones were there, just in basically back-to-back conversations with the three, I just knew it was there. App.D-162a-163a.

And furthermore:

> Q. You also said that her behavior was disruptive to the entire department. That's paragraph two. What was she doing that was disruptive?
> A. I believe in e-mails and in conversations

> she tended to [be] more argumentative and tended to cut people off midstream. If a particular person, for example David was having a conversation, rather than wait for him to finish his thought and his explanation, she would jump in disruptively and either disrupt his thinking, disrupt his thought or whatever he was trying to get across to the group. That's what I meant by "disruptive." App.D-163a-164a.

But from the onset of the Reinsurance Department, Watkins was causing a discord. In 2002, Watkins apologized for his disrespectful behavior toward Christman:

> I [Watkins] just wanted to apologize for the way I reacted towards you [Christman] yesterday. It was stupid and uncalled for. I had no right to act in such a way, and for that – I am sorry. We are a small group, and if we cannot get along and work together. . . . we will fail in our goals. Yesterday I let the team down, and if it was not for Jean – we would of failed. Once again, I apologize for my outburst. You are an incredibly dedicated worker, and in my book. . . .doing a fantastic job. I have the utmost trust in you, which encourages me as we all make this transition into our new department. Please don't be discouraged because of me and my stupidity. I am looking forward to the future of our department, because I believe that the three of us will be able to handle everything responsibly. In this future, I will make every attempt to <u>treat you with respect</u> [emphasis

> added] that a coworker should receive. If at any point, you feel that I am doing otherwise . . . . please do not feel that you cannot talk to me about it. I give you permission to do so. I ask that you please accept my utmost apology. App.D-169a.

In 2004 review, Evolo noted about Watkins's behavior:

> There have been a few occasions during the year where I [Evolo] had to address his [Watkins'] working relationship with a co-worker. He needs to continue to think through his actions and responses before delivering them to this person. He should evaluate how they will be perceived and adjust accordingly. App.D-175a.

Back in 2002 at the employer's request, Christman took the Harrison InnerView personality test. The test results (92 consistency score) present a different picture of Christman's personality traits:

> [Q]uite capable of being tactful (...) quite helpful and conscious of others' needs (...) has a good balance between sticking to opinions and being open-minded (...) neither outgoing nor reserved, but balanced in between the two points (...) extremely optimistic (...) fairly willing to collaborate with others with regard to making important decisions (...) tolerant of people who are indirect or evasive (...) unconcerned about influencing others (...) fairly empathetic and warm (...) fairly flexible and adaptable to changes. App.D-179a-185a.

The test results contradict Evolo's comments in Christman's nine-month review:

> I [Evolo] have spoken to a number of outside customers that have expressed similar concern for your [Christman's] abrupt tone and tenor and your unwillingness to be flexible. I have heard comments such as "rude and demanding" and "its all about Grazyna." You must improve your ability to work with others. Your attitude is easily translated as confrontational, unwilling to listen or compromise, and selfish. App.D-122a-123a.

And his comments in 2004 annual review:

> I have spoken to a number of Grazyna's internal and external customers and some have expressed similar concern for her abrupt tone and tenor, and her unwillingness to be flexible. App.D-129a.

In 2007 deposition, Evolo testified about concerns from internal and external customers' regarding Christman's poor communication skills:

> Q. Okay. And you added that internal and external customers compressed concern about this to you?
> A. Yes.
> Q. Can you elaborate on what kind of concerns that were expressed?
> A. As a supervisor, I made phone calls to some of her customers that she would have dealt with on a regular basis, just to get some of their feedback. And during

> those phone calls, I was told that there was concern in the way that Grazyna was carrying on her conversation with those individuals. As I've outlined in her performance review, those concerns were expressed with her abrupt tone and tenor and her unwillingness to be flexible during those conversations.
>
> Q. What do you mean "willingness to be flexible"?
>
> A. I don't have details, per se, of those conversations. I don't recall what those where. But at the time, probably what happened was there may have been a conversation with a particular reinsurer where there was information being requested, either from us of them or them of us. And quite honestly, she could've been asking for information and the reinsurer may not have been able to get to it right away, and based on her tone and tenor, they may have construed that to be her unwillingness to be flexible on some parameters they may be faced with. I don't recall exactly. App.D-164a-165a.

But Christman's emails give an opposite picture of the communication skills when dealing with her customers, [11] as illustrated by samples of her emails between 2002 and 2005. First, 02/18/05

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[11] Rick Beidleman (Evolo's supervisor prior to Dane Austin) recognized Christman's good interpersonal skill; in February 2003, he wrote: "[t]his outcome [contingent commission] is the result of a lot of hard work by Grazyna [Christman] as well as good interactions with the folks at HSB [Hartford Steam Boiler Insurance]." App.D-186a-187a.

emails to and from Shaunastar Douglas, an auditor at Price Waterhouse Coopers App.D-188a-189a. Second, 01/22/05 email to Robert Dicks, UNIG's VP General Auditor App.D-190a-191a. Third, 01/19/05 email to Ed Chin, JPWoods Accountant. App.D-191a-192a. Fourth, 08/05/04 email to Pat Thompson, her contact at American Re. App.D-192a-193a. Fifth, 09/18/03 emails from and to Gian Metzger at GeneralCologne Re, App.D-194a-197a and sixth, 04/23/02 email to and from Cheryl DeAngelo, UNIG's Underwriter. App.D-197a-198a.

B. The Reinsurance Accountants were treated differently in terms of their discipline, training and recognition.

In August 2003, Evolo put Watkins on probation:

> There have been a number or [of] instances where [redacted] [Watkins] didn't take time to reconcile or verify his work before submitting it. (asbestos billings to JPWoods, AAD Summary, E & O Settlement billing, GenRe Profit Sharing calculation and the AMRECO journal entry error). These have all proven to be costly errors. [12] App.D-204a.

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[12] In more detail, Watkins's 2003 errors entailed: (1) Reinsurance Asbestos Claims billings, (2) Annual Aggregate Deductible (AAD) Summary; (3) Errors & Omissions (E&O) Treaty Settlement billings; 4) Quarterly Profit Sharing (Contingent Commission) calculations for General Reinsurance Corp. (GenRe), located in Stamford, CT; (5) Asbestos Claims, journalized in the General Ledger for American Mutual *(Cont'd)*

According to Evolo:

> Some of the missteps that have occurred should be considered learning experiences [emphasis added], (13) however, [redacted] [Watkins] should understand that his credibility has been strained and he must work to rebuild his reputation. Accurate reinsurance accounting is vital and [redacted] needs to realize his work is

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Reinsurance Company, (AMRECO) located in Lisle, IL. The first three items were sent monthly to the broker in New Jersey, John P. Woods, who further billed on behalf of UNIG the individual Reinsurers - participants in various Reinsurance Treaties. (As submitted in Christman's 2005 SDHR Rebuttal).

(13) Christman referred to this quote in 2007 deposition: "Several studies have shown that managers sometimes engage in age discrimination without being aware of it. Years, back, in 1977, a survey conducted of 1,570 subscribers to the *Harvard Business Review* sought to assess the degree to which age discrimination affected managerial decisions.[1] The respondents were divided into two groups, and each group was asked to evaluate a series of problems involving poor worker performance and decisions regarding training and promotions. The problems presented to the two groups were virtually identical except for the age of the employee involved in the incident. One-half dealt with a younger worker and the other half with an older one. In each of the situations, the older employee fared worse in the respondents' evaluations, regardless of the person's qualifications. When both an older and a younger worker were failing to adequately perform the job, the older employee was seen as resistant to change, and the respondents recommended reassignment. Those surveyed believed, however, that the younger worker could benefit from an 'encouraging talk.' [emphasis added]. Similarly, the older, equally qualified worker was perceived as less motivated to

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> extremely important to the integrity of our [UNIG's] financial statements. App.D-207a.

Evolo took Watkins off probation in January 2004. App.D-199a. In 2005, he again put him on probation, [14] and extended his period of time to improve from ninety (90) days, App.D-207a to twelve (12) months, App.D-201a:

> This is a follow up to our meeting on Friday, May 13th, and is considered a formal written warning" regarding the incident that took place during the week of May 9th. As discussed, you produced an exhibit that was forwarded to Holborn Intermediaries that contained inaccurate information. Specifically, you overstated our catastrophe losses for 1992 by $41M dollars (...) Should there be another incident involving inaccurate information within the next 12 months [emphasis added] further disciplinary action may result. App.D-200a-201a.

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keep up with the changing technology, as less creative, and as less able to deal with job-related stress. Age bias has been around for a long time. Gordon F. Shea and Adolf Haasen, *The Older Worker Advantage, Making the Most of Our Aging Force* (Connecticut: PRAEGER, 2006), Chapter 4, pp. 43-44; quoting: [1] B. Rosen, "Management Perceptions of Older Employees," *Monthly Labor Review* 10, no. 5 (1978): 33-35. App.D-283a-284a.

[14] UNIG's "[d]iscipline is administered in accordance with the level of the offense. (...) Levels of discipline include: 1. Verbal Warning 2. Written Warning 3. Disciplinary Probation 4. Temporary lay-off without pay 5. Demotion 6. Termination." App.D-201a.

But Evolo gave Christman only thirty (30) days to improve the allegedly poor performance, when on January 6, 2005 he put her on probation. App.D-157a; *see* also AD-209a-210a. Only a month and a half later he terminated her employment on February 21st. App.D-112a. Evolo followed up with Nina Owens from Human Resources on Watkins's improvement, App.D-199a but there was no follow up [15] on Christman's progress. App.D-215a-216a; *see* also App.D-99a.

Evolo declined Christman participation in the JP Woods Managers Meeting held every March in New Jersey. App.D-225a-227a. In April 2004, Evolo wrote in Raga's annual review:

> [Redacted] [Raga] has attended the reinsurance claims audits and has visited JPWoods' office in order to gain first hand knowledge of their work process. App.229a.

In July 2004, Evolo wrote in Watkins's review:

> Interactions with JPWoods have afforded Josh [Watkins] a better understanding how our organizations work together. [Redacted] has spent time with their Accounting and Claims department and this experience has given [redacted] a better understanding of

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[15] In 2007 Deposition, Christman testified that: "[w]hen [she] escalated the [performance] issue in August of 2004, to Rick Beidleman, at Michael's recommendations to keep in mind the job ramifications if [she] go[es] above and [she] bypass[es] them, it really didn't take [her] anywhere. It wasn't addressed by the company. App.D-102a; *see* also App.D-217a-221a and D-223a-224a.

> how their respective functions fit with ours. App.D-174a.

But in Christman's 2004 review, he stated:

> Grazyna has learned most aspects of her current job, however, during the year there were occasions where she didn't understand what should have been done. Common sense (understanding) should prevail when she is completing her tasks. App.D-127a.

Evolo denied Christman these "first hand" training opportunities extended to the younger, male co-workers, who accompanied him on trips to New Jersey: Watkins twice in 2003 and 2004, and Raga in 2004.

Evolo denied Christman the flexibility extended to Watkins and Raga related to completion of Associate in Reinsurance (ARe) designation. In 2004, Evolo gave Watkins until "December 2006" to complete ARe. App.D-178a. Raga's initial timeline of "December 2003," App.D-248a was extended in 2004 to "December 2005," App.D-232a and once again in 2005 to "December 2008." App.D-233a. But in Christman's review, Evolo wrote:

> I have asked Grazyna to continue her pursuit of the ARe designation. After she failed ARe 141 in November '03, I recommended that she retry right away. This was not done and reflects her lack of interest and commitment. App.D-127a.

After Christman withdrew from ARe study in 2004 because of disability leave, Evolo expected she sign

up in January 2005 right after her surgery. App.D-235a; *see* also App.D-236a-242a.

When Christman and Raga failed ARe exams in the fall of 2003 and 2002, respectively, Evolo rewarded Raga with promotion to Senior Accountant in May 2003, App.D-243a-244a for "(...)be[ing] a member of the Reinsurance team for only 6 months and (...) becom[ing] exposed to many facets of Reinsurance (...) [having] fundamentally sound accounting background from his 13 years [16] of experience [17] in the accounting department (...)." App.D-245a. But Evolo bypassed Christman for promotion, even though in 2003 by a special project she worked on, she earned UNIG 1/3 million dollars in long outstanding contingent commission from Hartford Steam Boiler (HSB) Insurance Company. In February 2003, Rick Biedleman, Senior VP-Reinsurance, recognized her accomplishment in the e-mail to UNIG's upper management:

> At last we have finally come to agreement with HSB on the contingent payment for the

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[16] To Christman's knowledge, Raga and she became employed by UNIG in 1990, May and June, respectively. The announcement in May 2003 Flash, UNIG's monthly publication listed Raga as "[a] Utica employee since 1989." App.D-243a.

[17] UNIG's Leader's Guide indicates that inaccurate rating because of length of service should be avoided, "[it] is the tendency to overrate long-service employees and to underrate short-service employees. The supervisor/manager assumes that the longer an employee performs a job the more knowledgeable and proficient the employee will become. (...) In a performance review, how an employee performs his/her job is the object of the evaluation, not his/her length of service on the job. App.D-250a-251a.

> years '98 thru '02. Due in very large part to the initiative and perseverance of Grazyna Christman we have developed numbers and agreed with HSB on a contingent payment to us in the amount of $330,500.This compares, I am told to some $85,000 we have accrued for the payment. This outcome is the result of a lot of hard work by Grazyna as well as good interactions with the folks at HSB. And, it clears up contingent calculations that go back as far as the 7/1/98-12/31/99 profit contingent period. App.D-186a-187a.

Evolo subjected Christman to the economic harassment, [18] when he denied her the annual salary increase in 2004 and terminated her employment in 2005.

C. When Evolo terminated Christman's employment because of her allegedly poor job performance, he concurrently signed off on the financial statements she finalized that morning.

On February 21, 2005 at 1:28 PM, Evolo advised the Financial Reporting that both US Treasury reports were ready for mailing, awaiting a signature from George Wardley, UNIG's Secretary and Notary

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[18] UNIG's web-based training offered to all employees in 2004, defined the economic harassment as "(...) harassing behavior that results in a monetary loss for an employee or significant changes in workload or work assignment. Economic harassment requires that the threat of job loss or the promise of job benefits actually result in some type of employment action, such as termination, promotion, demotion, or reassignment to a considerably different job. App.D-254a

Public seal from Fran Richards:

> I believe Dave [Raga] left you a v[oice]-message regarding this [Christman's termination] matter. We are just waiting for George and Fran to sign. Please let us know if you need anything further. App.D-275a-276a; *see* also App.D-149a-151a.

As of February 21st, the only outstanding annual item on Christman's task list, App. D-150a was the Commerce Survey (due March 31, 2005). App.D-273a. On February 19th, Christman asked Evolo:

> It [Commerce Survey] is quite time consuming due to manual process. I will start working on it right away, along with catching up on the monthly tasks. Will you approve overtime, if needed? App.D-150a.

But UNIG focused on selected documents only to justify Christman's employment termination as indicated by UNIG's counsel:

> The documents are limited to the period of time from the date of Ms. Christman's written warning on January 6, 2005 through her termination date of February 21, 2005 (...) to focus your attention on her job performance during that period of time in order to justify that termination was the appropriate employment decision (as opposed to further warnings, probation, suspension, etc.). (...) There is a large volume of paperwork in connection with this case so I [DeTraglia] am trying to narrow the scope [emphasis added] as much as possible

for now. App.D-279a-280a.

II. This Court's supervisory powers are needed to resolve whether the summary judgment grant to UNIG was appropriate where Christman produced the evidence showing a falsity of employer's proffered reason and raising a genuine issue as to whether this proffered reason was not the employer's true reason.

On review *de novo*, the Court of Appeals for the Second Circuit found no error and "affirm[ed] substantially the reasons stated by the district court in its March 27, 2009 summary judgment order." App.A-4a. In granting the summary judgment to UNIG, the District Court for the Northern District of New York concluded that Christman has not established a prima facie case of employment discrimination under *McDonnell Douglas* burden shifting test, and

> [t]he record evidence demonstrates that Plaintiff [Christman] fails the second prong of the test in that she was not satisfactory performing her job at the time of her termination. Plaintiff also fails the fourth prong because the evidence establishes that Plaintiff's supervisor filled Plaintiff's position by employing a woman over forty (40) years of age. App.B-24a.

The District Court also concluded that UNIG's decision was based on a legitimate nondiscriminatory reason, thus not gender or age-based:

> Defendant offered a non-discriminatory

> reason for her [Christman's] termination-i.e. poor work performance-and she has not demonstrated any record evidence that this allegation of poor work performance is a pretext for discrimination. App.B-22a.

This Court's supervisory powers are needed to resolve whether Christman's record amply presents genuine issue of material fact. Christman's vast evidence [19] overwhelmingly contradicts the evidence presented by UNIG about her allegedly unsatisfactory job performance. For example, in regard to Christman's lack of performance improvement, *see* JPWoods PPR and CEoL 2003 and 2004 annual settlements -- *compare* App.D-121a,126a,133a-144a *with* Exhibits 28,p.1, 17,p.2 and 100,pp.1-5, attached to the Additional Statement of Material Facts in Plaintiff's Rule 7.1 Response to Defendant's Statement of Material Facts, ¶97 and ¶¶98-99, respectively. (Dkt. No. 40, 05/28/08). In regard to Christman's poor working relationships and communications skills, *see* Evolo's testimony -- *compare* App.D-162a-165a,169a,179a-185a,188a-198a *with* Exhibits 55,pp.36-37, 76, 75 and 78-80 attached to Plaintiff's Additional Statement of Material Facts, ¶49, ¶51, ¶53, ¶50, ¶47 and ¶54, respectively. (*Id*). Or in regard to Christman's lack of overtime commitment, *see* Evolo's testimony --

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[19] Christman "is not an attorney, has no legal coach and does not know all technicalities, but has been diligent in complying with pertinent Local and Federal Rules. Stefan D. Berg, Esq. represented Plaintiff [Christman] initially until the questionable withdrawal of counsel in February of 2008." *See* Christman's F.R.C.P. Rule 11 Motion for Sanctions against Defendant's Attorney for Conduct Violating Rule 11(b) (Dkt. No. 31, 07/31/08).

compare App.D-125a,130a,165a-166a *with* Exhibits 28,p.3, 17,p.3 and 55,p.38, attached to Plaintiffs Additional Statement of Material Facts, ¶63; ¶62 and ¶64, respectively. (*Id.*).

Summary judgment is appropriate "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." F.R.C.P. 56(c). The District Court stated that "a dispute of fact is 'material' if it 'might affect the outcome of the suit under the governing law.' *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)" and "a dispute of fact is 'genuine' if 'the [record] evidence is such that a reasonable jury could return a verdict for the nonmoving party.' *Id.*" App.B-15a-16a. But the Court of Appeals apparently overlooked its own ruling that "[t]he role of the Court is to determine whether there are any genuine issues of material fact to be tried, not to decide them. *Gallo v. Prudential Residential Servs., Ltd. Partnership*, 22 F.3d 1219, 1224 (2d. Cir.1994). In considering the motion, the Court must resolve ambiguities and draw all reasonable inferences in favor of the nonmoving party. 477 U.S. at 255. A District Court must grant summary judgment if there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). These statements, however, were not absolute as the *Celotex* Court noted that,

> We do not mean that the nonmoving party must produce evidence in a form that would be admissible at trial in order to avoid summary judgment. Obviously, Rule 56 does

> not require the nonmoving party to depose her own witnesses. Rule 56(e) permits a proper summary judgment motion to be opposed by any of the kinds of evidentiary materials listed in Rule 56(c), except the mere pleadings themselves, and it is from this list that one would normally expect the nonmoving party to make the showing to which we have referred." 477 U.S. at 324.

Christman has presented enough evidence to defeat summary judgment on the issue of pretext. [20] The record undoubtedly brings forth a genuine issue of material fact as to first, the veracity of Evolo's testimony (*compare* App.D-125a,130a *with* App.D-165a-166a, *see* also App.D-158a-160a). Second, whether Christman's job performance has indeed declined (*compare* App.D-121a,126a *with* AppD-133a-144a; *compare* App.D-120a,126a *with* App.D-147a,149a, *see* also App.D-149a-151a; *compare* App.D-154a *with* App.D-145a-146a; *compare* App.D-153a-154a *with* App.D.115a,145a; *see* also 256a-257a). Or third, whether her working relationships and communications skills were indeed poor (*compare* App.D-162a-164a *with* App.D-169a,175a; *compare* App.D-122a-123a,129a,164a-165a *with*

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[20] In 2007, Christman testified that Evolo did not make age related comments directly to her or in front of other employees when she was present, App.D-61a and referred to "[t]he overall perception (...) that the older employee is not as effective as the younger one, is not a computer whiz. App.D-59a. In 2004, Evolo sent Christman an ambiguous email containing Microsoft Excel charts produced by Watkins. In 2005, Evolo wrote in another email that "[he] shouldn't have to dictate [her] what needs to be accomplished as [she has] been around long enough to know." App.D-262a-270a.

App.D-179a-185a,188a-198), thus generating a factual dispute regarding the truth of UNIG's proffered reason.

In *St. Mary's Honor Center v. Hicks,* 509 U. S., 502, 511, the Supreme Court stated:

> The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination. Thus, rejection of the defendant's proffered reasons [will permit the trier of fact to infer the ultimate fact of intentional discrimination,][.]

This Court's supervisory powers are needed to resolve whether the lower courts overstepped their authority as gatekeepers when they decided the credibility issues instead of determining only whether there is evidence in the summary judgment record generating a genuine issue of material fact for trial. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge[:] (...) The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." 477 U.S. at 255. This Court's guidance is much needed, because an improper summary judgment grant to UNIG not only allows the employer to escape the liability for adverse employment action in violation of the Federal Laws, but also deprives Christman of her right to trial by jury. "The right of jury trial in civil cases at common law is a basic and fundamental feature of our system of federal

jurisprudence which is protected by the Seventh Amendment. A right so fundamental and sacred to the citizen (...) should be jealously guarded by the courts." *See Jacob v. New York City,* 315 U.S. 752, 752-753 (1942).

III. This Court's supervisory powers are needed to determine whether an employer can successfully articulate a defense under *McDonnell Douglas* method where the replacement employee was not hired until seven or more months after discharge.

The District Court concluded that "Plaintiff [Christman] (...) fails the fourth prong because the evidence establishes that Plaintiff's supervisor filled Plaintiff's position by employing a woman over forty (40) years of age." App.B-24a.

In a discharge case, the elements of *McDonnell Douglas* are modified since *McDonnell Douglas* involved a failure to hire. The courts have modified the elements in an ADEA discharge case as follows: (1) plaintiff was a member of the protected class; (2) was meeting the employer's legitimate expectations in performing the job; (3) was discharged or suffered an adverse employment action; and (4) was replaced by someone substantially younger or similarly situated employees of comparable qualifications who were substantially younger were treated more favorably. *See e.g., O'Connor v. Consolidated Coin Operator's Corp.,* 517 U.S. 308, 311 (1996); *Hazen Paper Co. v. Biggins,* 507 U.S. 604, 609 (1993).

During 2007 deposition, Evolo testified that he "hired [someone] to replace Christman after her termination of employment[,]" that "Margaret Krug

filled that position[,]" that he "[knew] her gender at the time[,]" that Krug was "obviously, a woman[,] [a]nd at the time (...) [he knew] she's over 50." [21] AD-168a.

In *O'Connor*, the Supreme Court clarified the fourth element of the prima facie model in discharge cases in regard to the age difference between the plaintiff and a replacement and held that plaintiff need only show that the replacement was "substantially younger." *Id.* at 312. The Supreme Court explained that the *McDonnell Douglas* elements are meant to be reliable indicators of age discrimination. In other words, the age difference between the plaintiff and a replacement provides a more accurate indicator of age discrimination than a comparison of whether the plaintiff is over age 40 and the replacement is younger than age 40.

A question, however, arises whether an employer can escape the liability for adverse employment action in violation of ADEA where the replacement employee was not hired until seven (7) or more months after the discharge (Christman's job posting was open as of 9/25/2005), App.D-41a; the job was not posted for nine (9) weeks after her discharge, and coincidently was posted two (2) weeks after she filed a Verified Complained with the State Division of Human Rights on 4/13/2005, App.D-42a; UNIG

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[21] In *Whittington v. Nordam Group Inc.*, 429 F.3d 986, 996 (10th Cir. 2005), the Court reasoned that all circumstantial evidence should be considered by the jury for it to weigh its value, rather than setting arbitrary numerical [age] limits. In *Carter v. Decisionone Corp.*, 122 F.3d 997 (11th Cir. 1997), the 3-year gap sufficient to permit an inference of age discrimination.

posted the job on 4/27/2005. App.D-39a.

This Court's supervisory powers are much needed to ensure that the employees within the protected class can recover damages from employers who by adverse employment action caused their injury, but who are attempting to dissemble afterwards.

IV. This Court's supervisory powers are needed to resolve a conflict between the Circuit Courts whether an employer can escape liability under Title VII where the evidence shows that a female employee was disfavored while similarly situated, male employees were receiving the preferential treatment.

The Second Circuit's ruling unsettles the protection provided to the employees by the Federal Law; therefore the public interest requires this Court's review. Under Title VII, Plaintiff may establish a prima facie case of unlawful discrimination by showing that an employer treated similarly situated employees outside the protected class more favorably. By affirming the District Court's conclusion that UNIG "offered a non-discriminatory reason for [Christman's] termination[.]" App.B-22a, the Second Circuit dismissed Christman's allegation that UNIG discriminated on the basis of her gender in violation of Title VII.

As proof of pretext -- in addition to generating a factual dispute about truthfulness of UNIG's proffered "because of poor performance" reason -- Christman also presented the evidence that UNIG

disciplined male employee less severely than she was disciplined for conduct that was more egregious than hers. Watkins was put on probation in 2003, subject to ninety (90) days performance follow up. App.D-204a,207a. Watkins was put again on probation in 2005, subject to twelve (12) months follow up. App.D-200a-201a. Christman was put on probation in January 2005, subject to thirty (30) days follow up, App.D-157a and was terminated only forty six (46) days later, App.D-112a with no follow up done. App.D-99a,215a-216a.

Christman points to the supervisor's favorable treatment of two male employees. When Raga failed ARe exam in November 2002, he was promoted to Senior Accountant in May 2003. App.D-243a-244a. When Christman failed the same exam in November 2003, she received a nine-month review in May 2004, followed by unsatisfactory July 2004 performance rating that deprived her of an annual salary increase.

To gain the first-hand experience of reinsurance operations, the male employees accompanied the supervisors (Evolo and Beidleman) to the annual JPWoods Managers Meetings in New Jersey. App.D-225a,227a. Watkins attended the meeting twice, in 2003 and 2004; Raga once in 2004. App.D-174a,229a. By not being selected in 2004, Christman was denied the training opportunities provided to both male employees. App.D-127a.

The male employees were given flexibility to complete Associate in Reinsurance (ARe) designation. For Watkins, to complete by "December 2006" was assigned in 2004. App.D-178a. Raga's initial timeline of "December 2003," App.D-248a was extended in 2004 to "December 2005," App.D-232a and once again

in 2005 to "December 2008." App.D-233a. Christman was required to complete the designation immediately. The fact that she did not sign up after the exam failed in November 2003 or in January 2005 right after her surgery, was perceived by her supervisor as "lack of interest and commitment." App.D-127a.

Christman has produced sufficient evidence to at least create a factual dispute as to whether the differences in disciplinary history of the male employee and hers were due to the gender-based discrimination. The record shows that Christman had no unsatisfactory performance reviews in the twelve (12) years prior to when Evolo and Beidleman (the latter replaced by Austin in December 2004) became her supervisors. App.D-117a-118a. The record also shows that although the supervisors were quick to discipline Christman and terminate her employment, App.D-112a,157a they were lenient toward disciplining Watkins when they gave him a second written warning in 2005 for the same type of errors that put him on probation in 2003. Erroneous financial statements leaving the company twice appear to be particularly egregious misconduct for an Accountant. In 2003, Watkins made gross errors in the financial statements forwarded to JPWoods, UNIG's broker who in turn billed the individual reinsurers on its behalf. App.D-204a. In 2005, Watkins overstated UNIG's losses by $41 million in the financial statement sent to Holbrook Intermediaries. App.D-200a-201a. Watkins's errors "have all proven to be costly errors." App.D-204a. The errors allegedly made by Christman occurred internally during preparation of financial statements. The gravity of Watkin's infraction is further exacerbated by the fact that his job was

higher grade. Watkins, as Accountant II, was expected to prepare financial statements through proper understanding and application of statutory accounting principles, and work under general supervision. App.D-273a. Christman, as Accountant I, was expected to assist with the preparation of financial statements and work under direct supervision of manager. App.D-271a. Watkins's actions seem to at least constitute the same kind of "serious lack of appropriate accounting credibility" that resulted in Christman's discharge.

This Court's supervisory powers are needed to resolve a matter where the Second Circuit has entered a decision in conflict with decision made by the Court of Appeals for the Eighth Circuit. In *Lynn v. Deaconess Med. Ctr.-West Campus,* 160 F.3d 484 (8th Cir. 1998), Michael Lynn alleged that Deaconess terminated him on the basis of his gender. The Court stated:

> As proof of pretext, Lynn presented evidence that Deaconess disciplined female nurses in the Rehab Unit less severely than he was disciplined for conduct that was more egregious than his. Primarily, Lynn points to his supervisors' favorable treatment of another registered nurse in the Rehab Unit, Karen Mohr. *Id.* at 487. (...) Lynn has produced sufficient evidence to at least create a factual dispute as to weather the differences in disciplinary history of female nurse and his were due to gender discrimination. The record shows that Lynn had no reports of work performance deficiencies in the time period prior to when Shanks and Ford became his supervisors.

> (...) The record also shows that although Ford and Shanks were quick to verbally counsel Lynn and to issue him Letters of Understanding, it took numerous reports and several months before Mohr was verbally counseled about her sleeping problem. (...) Sleeping on the job appears to be particularly egregious misconduct for a nurse on duty. The gravity of Mohr's infraction is further exacerbated by the fact that sometimes Mohr would be the only nurse present. *Id.* at 488. (...) Mohr's actions seem to at least constitute the same kind of "serious lack of appropriate nursing judgment" that resulted in Lynn's discharge. Thus, we find sufficient evidence to create a genuine fact issue as to whether the reason proffered by Deaconess was pretext. *Id.* at 489.

The Eighth Circuit reversed the District Court's judgment, concluding that

> Lynn presented evidence sufficient to create a reasonable inference that Deaconess's proffered reasons for discharging him were mere pretext for intentional discrimination. Under the *McDonnell-Douglas* framework, this is enough to survive a motion for summary judgment. Although Deaconess may ultimately be able to offer a plausible explanation for its treatment of Lynn and its other nurses, these are matters to be decided at trial and not by summary judgment [.] *Id.*

This Court's intervention will serve the national interest ensuring that the provisions of Title VII are

fairly and accurately applied in states across the country to promote a just application of the Labor Law.

CONCLUSION

For all the foregoing reasons, the Petition for A Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A – SUMMARY ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DECIDED APRIL 29, 2010

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATIONS TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan Unites States Courthouse, 500 Pearl Street, in the City of New York, on the 29th day of April, two thousand ten.

PRESENT: **DENNIS JACOBS**,
Chief Judge,

Appendix A

JOSEPH M. McLAUGHLIN,
ROBERT D. SACK,
Circuit Judges.

[Oval stamp] UNITED STATES COURT OF APPEALS FILED APR 29 2010 CATHERINE O'HAGAN WOLFE, CLERK SECOND CIRCUIT

- -x

Grazyna H. Christman,
Plaintiff-Appellant,

-v.- 09-1385-cv

Utica National Insurance Group,
Defendant-Appellee.

- -x

FOR APPELLANT: Grazyna H. Christman, pro se, Utica, NY

FOR APPELLEE: Joseph A. DeTraglia, Getnick Livingston Atkinson & Priore, LLP Utica, NY

1

Appeal from a judgment of the United States District Court for the Northern District of New York (Suddaby, J.).

UPON DUE CONSIDERATION IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court be **AFFIRMED**.

Appendix A

Grazyna H. Christman appeals from a judgment entered April 6, 2009 in the United States District Court for the Northern District of New York (Suddaby, J.). Christman claims that she was terminated from her employment in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., and the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. In the orders relevant to this appeal, the district court granted summary judgment to the defendant's on all claims; and denied Christman's motion's for discovery under Federal Rule of Civil Procedure 56 (f), and for sanctions under Federal Rule of Civil Procedure 11 (b). We otherwise assume the parties' familiarity with the underlying facts, the case's procedural history, and the issues on appeal.

We review the district court's summary judgment order de novo. E.g. Miller v. Wolpoff & Abramson, L.L.P., 321 F.3d 292, 300 (2d Cir. 2003). Summary judgment is

appropriate where, drawing a factual inferences . . . in favor of the non-moving party [,] . . . there are no genuine issues of material fact and . . . that moving party is entitled to judgment as a matter of law." Id. (citation omitted). On review, we find no error, and affirm for substantially the reasons stated by the district court in its March 27, 2009 summary judgment order.

Respecting the district court's rule 56 (f) ruling, we review for abuse of discretion, Gualandi v. Adams, 385 F.3d 236, 244-45 (2d Cir. 2004); and find none. Christman failed to support her motion with an affidavit describing: (1) what facts are sought and how they are to be obtained; (2) how these facts are reasonably expected to raise a genuine issue of material fact; (3) what efforts the affiant has made to obtain them; and (4) why the affiant's efforts were unsuccessful." Id. at 244.

Respecting the district court's Rule 11(b) ruling, we likewise review for abuse of discretion, Gurary v. Winehouse, 235 F.3d 792, 798 (2d Cir. 2000);

and find none.

2

Christman has not shown (as she asserts) that the defendant's filings mischaracterized the evidence in the record or were submitted for any "improper purpose," Fed. R. Civ. P. 11 (b) (1). We have considered Christman's remaining arguments and find them to be without merit. The district court's judgment is accordingly **AFFIRMED**.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE,
CLERK
s/
[Seal]
UNITED STATES
COURT OF APPEALS
SECOND CIRCUIT

3

APPENDIX B – DECISION AND ORDER OF THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF NEW YORK FILED APRIL 6, 2009

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

[Stamp] U.S. DISTRICT COURT-N.D. OF N.Y.
COPY FILED MAR 27 2009 AT__O'CLOCK__
LAWRENCE K.BAERMAN, CLERK-BINGHAMTON

GRAZYNA H. CHRISTMAN,
Plaintiff,

v. 6:06-CV-1392 (GTS/GHL)

UTICA NATIONAL INSURANCE GROUP, INC.,
Defendant.

APPEARANCES: OF COUNSEL:

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JOSEPH A. DeTRAGLIA, ESQ.

HON. **GLENN T. SUDDABY**, U.S. District Judge

Appendix B

DECISION and ORDER

Currently before the Court in this employment discrimination action are the following seven motions: (1) Defendant's motion for summary judgment (Dkt. No. 30); (2) Plaintiff's motion to reopen discovery in order to obtain the disclosure of the personnel records of three employees (Dkt. No. 38); (3) Plaintiff's first motion for sanctions against defense counsel for, *inter alia,* willfully failing to produce the records in question (Dkt. No. 46); (4) Defendant's first motion for a protective order limiting any remaining disclosure obligations, which it may be deemed to have, to computerized searches and prohibiting Plaintiff from disclosing any material misrepresentations to the Court in his motion and response papers (Dkt. No. 64).confidential information she obtains (Dkt. No. 47); (5) Defendant's second motion for a protective order requiring Plaintiff to return to Defendant all privileged and /or inadvertently disclosed materials received by Plaintiff in electronic form, including a DVD inadvertently containing a small number of privileged emails (Dkt. No. 52); (6) Plaintiff's motion to compel the disclosure of the above-referenced personnel records of three employees (Dkt. No. 63); and (7) Plaintiff's second motion for sanctions, *inter alia,* making material misrepresentations to the Court in his motion and response papers (Dkt. No. 64).

For the reasons set forth below, the Court rules as follows: (1) Defendant's motion for summary judgment (Dkt. No. 30) is GRANTED; (2) Plaintiff's motion to reopen discovery (Dkt. No. 38) is DENIED;

(3) Plaintiff's first motion for sanctions against defense counsel (Dkt. No. 46) is DENIED; (4) Defendant's first motion for a protective order (Dkt. No. 47) is DENIED as moot; (5) Defendant's second motion for protective order (Dkt. No. 52) is GRANTED to the extent that it requests that Plaintiff be ordered to return to Defendant the DVD in question, but is otherwise denied; (6) Plaintiff's motion to compel disclosure of personnel records (Dkt. No. 63) is DENIED; (and (7) Plaintiff's second motion for sanctions (Dkt. No. 64) is DENIED. As a result, Plaintiff's Complaint is dismissed in its entirety, and Plaintiff is ordered to return to Defendant the above-described DVD within seven (7) days of this Decision and Order.

I. RELEVANT BACKGROUD

A. Procedural History

On November 16, 2006, Plaintiff filed a Complaint alleging that Defendant violated her following rights by terminating her employment under the pretext of poor performance: (1) her rights under the AGE Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621, *et seq.*; (2) her rights under the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5 *et seq.*; and (3) her rights under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101. (*See* Dkt. No. 1.)

On November 5, 2007, discovery in this action closed. (Dkt. Nos. 12-14.) On January 24, 2008, Stefan D. Berg, Esq., requested permission to withdraw as counsel for Plaintiff. (Dkt. No. 15.) On

February 8, 2008, the Court granted Mr. Berg's request. (Dkt. No. 20.)

On April 3, 2008, Defendant moved for summary judgment (Dkt. No. 30.) Plaintiff requested, and was granted four (4) extensions of deadline by which she had to respond to Defendant's motion. On May 28, 2008 (the final day in which she had to respond to the motion), Plaintiff filed her response to Defendant's motion (Dkt. No. 39.)

On the same day she filed her response, Plaintiff also filed a motion to reopen discovery - more than four (4) months after the discovery deadline has passed. (Dkt. No. 38.) In her motion papers, Plaintiff argues that, although Mr. Berg had requested the personnel records of three individuals during discovery, these records were never produced. (*Id.* at 1-2.) Plaintiff also argues that these documents are material to her case, because of the circumstances that surrounded the hiring of two individuals, and the decision not to hire the third individual. (*Id.*)

In response to Plaintiff's motion to reopen discovery, Defendant argues that Plaintiff's motion should be denied for four reasons. First, argues Defendant, Plaintiff failed to articulate any reason for needing the records other that "they will allegedly show circumstances that surrounded [the] hiring of Mr. Raga and Mrs. Krug, but not hiring Martha Dumont by Michael Evolo." (Dkt. No. 43 at 1.) In support of its argument, Defendant points out that Plaintiff has not alleged in her Complaint a claim for failure to hire, which makes records of whom

Appendix B

Plaintiff's

3

former supervisor may or may not have hired irrelevant to Plaintiff's action. (*Id.* at 1-2.) Second, argues Defendant, because only Mr. Raga worked under Mr. Evolo during the same time period as did Plaintiff, the request of the personnel records of the other two individuals is "not only irrelevant, but also completely inappropriate and would violate their rights to privacy and confidentiality.) (*Id.* at 2.) Third, argues Defendant, is already provided Mr. Raga's records to Plaintiff "during the extensive investigation of [Plaintiff's] identical discrimination claims before the New York State Division of Human Rights." (*Id.*) Defendant also indicates that these documents were used by Plaintiff during her deposition of Mr. Evolo. (*Id.*) Fourth, and finally, argues Defendant, Plaintiff failed to comply with Fed. R. Civ. P. 56(f) when she did not file an affidavit with her motion to compel. (*Id.*)

On July 31, 2008, Plaintiff filed a motion for sanctions under Fed. R. Civ. P. 11, based on defense counsel's conduct throughout litigation, with particular focus on counsel's actions once Plaintiff became *pro se*. (Dkt. No. 46.)

On August 8, 2008, Defendant filed a motion for a protective order limiting any remaining disclosure obligations, which it may be deemed to have, to computerized searches and prohibiting Plaintiff from disclosing any confidential information she obtains. (Dkt. No. 47.) in its motion, Defendant argues that it has already disclosed approximately six thousand (6,000) pages of requested materials,

and that requiring disclosure of any paper documents would be unduly burdensome. (Dkt. No. 47, at 2.) In addition, Defendant argues that it "intends to turn over any additional emails if finds[,]" noting that it is not trying to hide any materials, but that

4

the search is burdensome and time consuming. (*Id.* at 3-4.)

On September 12, 2008, Defendant filed a second motion for protective order. (Dkt. No. 52.) In its motion, Defendant seeks "an Order requiring Plaintiff to return to Defendant a DVD which inadvertently disclosed privileged and other email falling outside the scope of the Court's Order dated February 8, 2008." (Dkt. No. 53.)

On October 2, 2008, this case was then reassigned to the undersigned. (Dkt. No. 56.)

On November 4, 2008, Plaintiff filed a motion to compel disclosure of the same personnel records sought in the motion to reopen discovery. (Dkt. No. 63.)

On the same day, Plaintiff also filed a second motion for Fed. R. Civ. P. 11 sanctions against defense counsel for, *inter alia*, making material misrepresentations to the Court in his motion and response papers. (Dkt. No. 64.)

B. Statement of Undisputed Material Facts

For the sake of brevity, the Court will only

provide a brief recitation of the undisputed material facts on Defendant's motion for summary judgment.

Plaintiff was hired by Defendant on June 28, 1990. (*Compare* Dkt. No. 30, Part 2, ¶ 1 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 1 [Plf.'s Rule 7.1 Response].) On March 3, 1995, Plaintiff was transferred to the corporate accounting department, where Plaintiff held the title of Junior Accountant. (*Compare* Dkt. No. 30, Part 2, ¶¶ 4-5 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶¶ 4-5 [Plf.'s Rule 7.1 Response].) Plaintiff held this position throughout the remainder of her employment with Defendant. (*Compare* Dkt. No. 30, Part 2, ¶ 6 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 6 Plf.'s Rule 7.1 Response].)

In the Fall of 2002, Defendant restructured some of its departments. (*Compare* Dkt. No.

5

30, Part 2, ¶ 7 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 7 Plf.'s Rule 7.1 Response].) As a result, reinsurance accounting was reorganized into a new department known as the reinsurance accounting unit. (*Compare* Dkt. No. 30, Part 2, ¶ 8 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 8 Plf.'s Rule 7.1 Response].) Michael Evolo was made supervisor of this unit. (*Compare* Dkt. No. 30, Part 2, ¶ 9 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 9 Plf.'s Rule 7.1 Response].) Three employees, including Plaintiff, reported to Mr. Evolo. (*Compare* Dkt. No. 30, Part 2, ¶ 10 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 10 Plf.'s Rule 7.1 Response].) In August 2003, Mr. Evolo evaluated Plaintiff after reviewing her performance for about

ten (10) months. (*Compare* Dkt. No. 30, Part 2, ¶ 13 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 13 Plf.'s Rule 7.1 Response].) This resulted in an overall performance rating of "3" (which means that she "meets expectations of the position.") (*Compare* Dkt. No. 30, Part 2, ¶ 14 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 14 Plf.'s Rule 7.1 Response].) Plaintiff stated in her deposition that "the 2003 review was not biased[but] ... was consistent with the reviews that [she] was getting for the previous years with [Defendant]." (*Compare* Dkt. No. 30, Part 2, ¶ 15 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 15 Plf.'s Rule 7.1 Response].)

During the same period, Mr. Evolo evaluated an Accountant II co-worker of Plaintiff after reviewing his performance for about ten months. (*Compare* Dkt. No. 30, Part 2, ¶ 16 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 16 Plf.'s Rule 7.1 Response].) This resulted in an overall performance rating for Accountant II of "2" (which means that she "does not fully meet the expectations of the positions.") (*Compare* Dkt. No. 30, Part 2, ¶ 17 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 17 Plf.'s Rule 7.1 Response].) Subsequent to

2003, Mr. Evolo gave Plaintiff performance evaluations that indicated that her performance was declining. (*Compare* Dkt. No. 30, Part 2, ¶ 19 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 19 Plf.'s Rule 7.1 Response].) On May 11, 2004, Mr. Evolo and Plaintiff discussed her job performance and Mr. Evolo gave Plaintiff a written memorandum "identifying certain areas of [plaintiff's performance that needed immediate improvement." (*Compare*

Dkt. No. 30, Part 2, ¶ 20 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 20 Plf.'s Rule 7.1 Response].) On June 8, 2004, Mr. Evolo sent Plaintiff an email, again outlining the need for improvement in several areas of her job performance. (*Compare* Dkt. No. 30, Part 2, ¶ 21 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 21 Plf.'s Rule 7.1 Response].) In July 2004, Mr. Evolo provided an annual evaluation of Plaintiff. (*Compare* Dkt. No. 30, Part 2, ¶ 22 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 22 Plf.'s Rule 7.1 Response].) In that review, he rated her overall performance as a "2." (*Compare* Dkt. No. 30, Part 2, ¶ 23 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 23 Plf.'s Rule 7.1 Response].) In that same month, Mr. Evolo rated the overall performance of Accountant II as a "3." (*Compare* Dkt. No. 30, Part 2, ¶ 24 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 24 Plf.'s Rule 7.1 Response].) On August 10, 2004, Plaintiff again received a written memorandum from Mr. Evolo which indicated the need for Plaintiff to "improve her technical performance." (*Compare* Dkt. No 30, Part 2, ¶ 25 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 25 Plf.'s Rule 7.1 Response].)

On January 6, 2005, Mr. Evolo and Mr. Evolo's supervisor met to discuss Plaintiff's job performance, and Plaintiff was put on probation and given a written warning. (*Compare* Dkt. No. 30, Part 2, ¶ 26 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 26 Plf.'s Rule 7.1 Response].) On February 21, 2005, Defendant terminated Plaintiff's

employment. (*Compare* Dkt. No. 30, Part 2, ¶ 29 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1,

¶ 29 Plf.'s Rule 7.1 Response].) Throughout her employment, Plaintiff frequently coughed as a result of a "throat condition." (Dkt. No. 1 at 4.) Plaintiff believes that this "throat condition" constitutes a disability within the meaning of the ADA. (Dkt. No. 1 at 4-5.)

II. LEGAL STANDARD ON MOTION FOR SUMMARY JUDGMENT

Under Fed. R. Civ. P. 56, summary judgment is warranted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In determining whether a genuine issue of material fact exists, the Court must resolve all ambiguities and draw all reasonable inferences against the moving party. In addition, "[the moving party] bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the ... [record] which it believes demonstrate[s] the absence of any genuine issue of material fact." *Celotex v. Catrett*, 477 U.S. 317, 323-24 (1986). However, when the moving party has met this initial responsibility, the nonmoving party must come forward with "specific facts showing a genuine issue [of material fact] for trial." Fed. R. Civ. P. 56(e)(2).

As for the *materiality* requirement, a dispute of fact is 'material" if it "might affect the outcome of the suit under the governing law." *Anderson v.*

Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). "Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson*, 477 U.S. at 248 [citation omitted].

As for the *genuineness* requirement, a dispute fact is "genuine" if "the [record] evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* As a

result, "[c]onclusory allegations, conjecture and speculation ... are insufficient to create a *genuine* issue of fact." *Kerzer v. Kingly Mfg.*, 156 F.3d 396, 400 (2d Cir. 1998) [citation omitted; emphasis added]; see also Fed.R. Civ. P. 56(e)(2).[1] Similarly, inadmissible hearsay is insufficient to create a genuine issue of fact, "absent a showing that admissible evidence will be available at trial." Burlington Coat Factory Warehouse Corp. v. Esprit De Corp., 769 F.2d 919, 924 (2d Cir. 1985) [citation omitted]. Moreover, "an affidavit ... that, by omission or addition, contradicts the affiant's previous deposition testimony" is insufficient to create a *genuine* issue of fact. Hayes v. New York City Dept. of Corr., 84 F.3d 614, 619 (2d Cir. 1996) [citations omitted].

III. DISCUSSION

A. Plaintiff's Motion to Reopen Discovery, Her Motion to Compel Disclosure of Personnel Files, Her Two Motions for Sanctions, and Defendant's First Motion for a Protective Order

Appendix B

"To request discovery under Rule 56(f), a party must file an affidavit describing: (1) what facts are sought and how they are to be obtained; (2) how this facts are reasonably expected to raise a genuine issue of material fact; (3) what efforts the affiant has made to obtain them; and (4) why the affiant's efforts were unsuccessful." *Gualandi v. Adams*, 385 F. 3d 236, 244 (2d Cir. 2004) (citing *Hudson River Sloop Clearwater, Inc. v. Dep't of the Navy*, 891 F. 2d 414, 422 [2d. Cir. 1989]). A district court may deny a discovery request where "the additional discovery would not have precluded summary judgment." *Qualls v. Blue Cross of Cal., Inc.*, 22 F.3d 839,

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[1] As the Supreme Court has famously explained, "[The nonmoving party] must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus., Co. Ltd. V. Zenith Radio Corp, 475 U,S. 574, 585-86 (1986) [citations omitted].

844 (9th Cir. 1994). Stated another way, "[n]o discovery ... is necessary where [the requesting party] cannot establish an essential element of their cause of auction or where [that party] fail[s] to create a material issue of fact." *Crossland Federal Sav. Bank v. by F.D.I.C. v. 114 East Realty Co.*, 93-cv-2925, 1994 WL 30460, at *4 (S.D.N.Y. Jan 28, 1994) (citing *Burke v. Bevona*, 931 F.2d 998, 1002 [2d Cir. 1991]).

After carefully considering the matter, the Court concludes that Plaintiff's motion to reopen discovery, her motion to compel the disclosure of personnel files, and her two motions for sanctions

should be denied (and that Defendant's first motion for a protective order should therefore be denied as moot) for four reasons. First, Plaintiff failed to comply with Fed. R. Civ. P. 56(f) by not filing an affidavit with her motion, which in and of itself is grounds for denying her motion. [2]

Second, the Court finds, based on the record evidence, that the materials that Plaintiff has requested are not reasonable expected to raise a genuine issue of material fact. Indeed, her argument that the materials would do so is entirely speculative in nature. The Court notes that the flaws with plaintiff's claims are discussed below in Part III.B. of this Decision and Order. The Court notes also that Plaintiff's former attorney, Mr. Berg, represented Plaintiff throughout

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[2] The Court acknowledges that the special leniency normally afforded to *pro se* litigants may somewhat loosen the Court's procedural rules. *See Traguth v. Zuck*, 710 F.2d 90, 95 (2d Cir. 1983). However, that special leniency does not completely relieve a pro se litigant of the duty to comply with those procedural rules. Rather, as both the Supreme Court and Second Circuit have repeatedly recognized, the requirements set forth in the Federal Rules of Civil procedure (and Local Rules of Practice) are procedural rules that even pro se litigants must follow. *See McNeil v. U.S.*, 508 U.S. 106, 113 (1993); *Faretta v. California*, 422 U.S. 806, 834, n.46 (1975); *Triestman v. Fed, Bureau of Prisons*, 470 F.3d 471, 477 (2d Cir. 2006); *Traugth v. Zuck*, 710 F.2d 90, 95 (2d Cir. 1983). The Court also notes that Plaintiff received a copy of the Pro Se Manuel on February 8, 2008, more than two months before she filed her motion to compel.

discovery. When Defendant did not provide the materials in response to Plaintiff's request to them, Mr. Berg decided not to file a motion to compel. At the very least, this raises a significant doubt, in the Court's view, as to necessity of the materials.

Third, as pointed out by defense counsel, Plaintiff has already been provided the personnel records of one of the three employees (Mr. Raga). As a result, she does not need them to be again produced by Defendant.

Fourth, and finally, Defendant provided approximately six (6,000) pages of requested materials to Plaintiff during discovery, which evidences the fact that Defendant's failure to turn over the requested materials does not amount to bad faith, or anything that resembles sanctionable activity.

For all of these reasons, Plaintiff's motion to reopen discovery (Dkt. No. 38) is denied; her motion to compel the disclosure of personnel records (Dkt. No. 63) is denied; her Plaintiff's first motion for sanctions against defense counsel (Dkt. No. 46) is denied; her second motion for sanctions against defense counsel (Dkt. No. 64) is denied; and Defendant's first motion for a protective order (Dkt. No. 47) is denied as moot.

B. Defendant's Motion for Summary Judgment

1. Plaintiff's ADA Claim

Appendix B

In its motion for summary judgment, Defendant argues that Plaintiff has failed to establish a prima facie case of discrimination under the ADA because Plaintiff is unable to meet the second or fourth prongs of the test. (Dkt. No. 31, at 6.) In response, Plaintiff argues that she has met her burden of establishing a prima facie case of discrimination, has met her burden of showing pretext, and has produced evidence of disparate treatment (Dkt. No. 39, at 5-7.)

11

Having reviewed all the evidence, the Court concludes that Plaintiff has not met her prima facie burden under the ADA, and that in alternative, she has not demonstrated that her termination because of poor work performance was pretext for discrimination.

In disability discrimination cases, courts apply the tree-step burden-shifting analysis established in *McDonnell Douglas Corp. v. Green*, 411 U.S.792, 802-04 (1973.) First, the plaintiff must establish a prima facie case. *McDonnell Douglas Corp. v. Green*, 411 U.S.792, 802-04. If the plaintiff establishes a prima facie case, the burden of production shifts to the defendant to demonstrate a legitimate non-discriminatory reason for its actions. *Id.* Once the defendant offers a legitimate non-discriminatory reason, in order to prevail, the plaintiff must show that the proffered reason is nothing but a pretext for intentional discrimination. *Id.* Despite the fact that the burden of production may shift, at all times the plaintiff maintains the burden of persuasion, and therefore, in order to withstand summary judgment stage, the plaintiff "must establish a genuine issue of

material facts either through direct, statistical or circumstantial evidence as to whether the employer's reason for discharging her is false and as to whether it is more likely that a discriminatory reason motivated the employer to make the adverse employment decision." *Gallo v. Prudential Residential Servs., Ltd.*, 22 F.3d 1219, 1225 (2d Cir. 1994).

"A plaintiff alleging employment discrimination under the ADA bears the initial burden of establishing a prima facie case." *Ryan v. Grae & Rybicki, P.C.*, 135 F.3d 867, 869 (2d Cir. 1998) [citation omitted]. To satisfy this burden, plaintiff must establish that (1) her employer is subject to (1) her employer is subject to the ADA; (2) she is disabled within the meaning of the ADA; (3) she was otherwise qualified to perform the essential functions of her job, with or without reasonable accommodation; and (4) she suffered and adverse employment action because of her disability."

12

Cody v. County of Nassau, 577 F. Supp.2d 623, 627 (E.D.N.Y 2008) [citation omitted]. "Not every impairment is a 'disability' within the meaning of the ADA; rather, there are two requirements: the impairment must limit a major life activity and the limitation must be substantial." *Capobianco v. City of New York*, 422 F.3d 47, 56 (2d Cir. 2005).

In her Complaint, Plaintiff alleges that she frequently coughed as a result of a throat condition for which she had a surgery. (Dkt. No. 1 at 4-5.) At her deposition, Plaintiff testified that her disability was her "impaired condition, the urge to cough

beyond my control." (Dkt. No. 30, Part 4, at 26 [Plf's Dep. Tr. 24:8-9].) Plaintiff admitted in her deposition that her "impaired condition" did not prevent her from doing any daily life activities. (Dkt. No. 30, part 4, at 26 [Plf's Dep. Tr.24:10-12].) In addition, Plaintiff testified that her medical condition did not limit her ability to perform her job duties. (Dkt. No. 30, part 4, at 27 [Plf's Dep. Tr.25:6-8].) Plaintiff also testified that she did not believe that her condition was "not related to [her] employment." (Dkt. No. 30, part 4, at 27 [Plf's Dep. Tr.25:9-11].) Because plaintiff cannot establish that her cough was a substantial impairment that limited a major life activity, Plaintiff cannot meet her prima facie burden of demonstrating that she had a disability within the meaning of the ADA. The fact that Defendant failed to turn over the requested materials is therefore irrelevant.

In the alternative, even if Plaintiff had demonstrated that her cough amounted to a disability within the meaning of the ADA, the Court finds that plaintiff has failed to offer evidence that she was terminated because of her cough. Finally, and most importantly, even if the Court were to find that Plaintiff had met her prima facie burden under the ADA (which it does not find), Plaintiff's claim would fail because Defendant offered a non-discriminatory

reason for her termination-i.e. poor work performance-and she has not demonstrated any record evidence that this allegation of poor work performance is a pretext for discrimination. [3]

Appendix B

2. Plaintiff's ADEA and Title VII Claims

"On a motion for summary judgment, claims of discrimination under Title VII, Section 1981, the ADEA, the NYSHRL, and the NYSCRL are analyzed under the framework articulated in *McDonnellDouglas Corp. v. Green*, 411 U.S.792, 802-04 (1973.)" *Davis v. Avaya*, Inc., 295 F.App'x 380, 381 (2d Cir. Oct. 2, 2008). Under this framework, in order for a Plaintiff to service summary judgment, she must first make out a prima facie case of discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S.792, 802-04. In order to make out a prima facie case, Plaintiff must demonstrate the following: "(1) membership in the protected class; (2) satisfactory job performance; (3) termination of employment or other adverse employment action; and (4) the ultimate filing of the position with an individual who is not a member of the protected class." Farias v. Industrial Sys., Inc. 259 F.3d 91, 98 (2d Cir. 2001). Further, the protected classification "must have actually played a role in "the employer's decision making process and had a determinative influence on the outcome. *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S.133, 141 (2000) [citation and internal quotation omitted].

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[3] The Court notes there is a copious documentation that reflects the decline in Plaintiff's work., Mr. Evolo's efforts to work with Plaintiff, and Mr. Evolo's explanation of why Plaintiff's work performance was poor. (*See* Dkt. No. 30, Part 4, at 39-54.) In addition, NYSDHR's dismissal of Plaintiff's discrimination complaint stated that its investigation "failed to reveal that [Plaintiff] was subjected to

disparate treatment with regards to tasks and performance standards ... between August 2003 and January, 2005, [when Plaintiff was counseled on at least six occasions for unsatisfactory performance and given suggestions for improvement ..." The investigation also noted that "[others] were evaluated on the same criteria ... and [Plaintiff] was terminated because she failed to improve on her work performance and not because of her age, gender, or disability." (See Dkt. No. 30, Part 4, at 19-21 [DeTraglia Affidavit Exhibit C].)

14

The record evidence demonstrates that Plaintiff fails the second prong of the test in that she was not satisfactory performing her job at the time of her termination. Plaintiff also fails the fourth prong because the evidence establishes that Plaintiff's supervisor filled Plaintiff's position by employing a woman over forty (40) years of age. (Dkt. No. 31, Part. 3, at 28 [Evolo Dep. Tr 54:11-19].) Furthermore, Plaintiff admitted during her deposition that her supervisor had never made any comments to her concerning her age and gender. (Dkt. No. 30, Part. 4, at 28 [Plf's Dep. Tr 38:9-14].) In sum, even if the requested personnel records demonstrate evidence of discriminatory hiring practices, the records do not help Plaintiff overcome the necessary element of satisfactory job performance, nor do they address the filing of the position that Plaintiff was terminated from. As a result, Plaintiff cannot establish a prima facie case.

In the alternative, even if the Court found that Plaintiff established a prima facie case under the ADEA and Title VII, Defendant has asserted a legitimate, non-discriminatory reason for its action, which Plaintiff cannot show to be pretextual. The law

is clear that, to survive summary judgment, once a Plaintiff makes out her prima facie face, the Employer must simply demonstrate a non-discriminatory reason for termination, such as poor work performance. [4] Once an Employer does this, the burden falls squarely on Plaintiff to show that the Employer did not

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[4] If the plaintiff is able to meet her burden of establishing a prima facie case, "the burden of production then shifts to the defendant who must proffer a legitimate, non-discriminatory reason for its actions in order to rebut the presumption of unlawful discrimination." *Greenway v. Buffalo Hilton Hotel*, 143 F.3d 47, 52 (2d Cir. 1998) [citation omitted]. At this stage, "[t]he employer merely needs to 'explain what he has done.'" *Sanzo v. Uniondale Union Free School Dist.*, 381 F. Supp.2d 113, 117-18 (E.D.N.Y. 2005) (quoting *Texas Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 256[1981]). Poor job performance, which includes poor communication with supervisors, as well as desire to promote efficency, constitute "legitimate, clear, specific and non-discriminatory reasons[s]" for termination. *Potenza v. City of New York Dept. of Transp.*, 00-CV-0707, 2001 WL1267172, at *6(S.D.N.Y. Oct 23, 2001).

terminate her employment based on the well-documented unsatisfactory job performance. [5]

Here, plaintiff simply cannot meet her burden. The record evidence establishes that Plaintiff's work performance has been declining for a significant period of time. (*See* Dkt. No. 31, part 2, at 30-48.) Despite numerous attempts at corrective action by Defendant, however, Plaintiff's performance did not improve to an acceptable level, and her employment was terminated. Although plaintiff may allege that her supervisor was biased, she has not adduced any

specific evidence of bias to withstand summary judgment. In fact, the record evidence is directly to the contrary in that her supervisor consistently applied Defendant's uniform performance standards toward his subordinates.

For all these reasons, Defendant's motion for summary judgment (Dkt. No. 30) is granted.

C. Defendant's Second Motion for a Protective Order

On September 12, 2008, Defendant filed a second motion for protective order. (Dkt. No. 52.) In its affidavit submitted in support of its motion, Defendant indicated that, while attempting to provide Plaintiff with certain documentation that she requested after the close of discovery, which the Court addressed in its order dated February 8, 2008, Defendant inadvertently disclosed privileged and other emails falling outside the scope of the Order. (Dkt.

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[5] Should the employer satisfy its burden, "the presumption [of discrimination], having fulfilled its role of forcing the defendant to come forward with some [non-discriminatory] response, simply drops out of the picture." *Greenway*, 143 F.3d at 52 (quoting *St. Mary's Honor Ctr. V. Hicks*, 5009 U.S. 502, 510-11 (1993) (first alteration in original). As a result, the "ultimate burden" shifts back to plaintiff, who must prove that "the employer'sproffered reason is merely a pretext for its intentional discrimination." *Greenway*, 143 F.3d at 52 [citations omitted]. "If the plaintiff cannot prove intentional discrimination motivated by her disability, then the defendants are entitled to summary judgment. Sanzo, 381 F. Supp.2d at 118.

No.53.) Defendant, therefore requested in its second motion for a protective order that Plaintiff be ordered to return to it the DVD that contains information that is outside the scope of the Court's Order. Because the information contained on the DVD is Defendant's work product, and because the Court concludes that granting summary judgment in Defendant's favor is appropriate, the Court finds that there is no reason for Plaintiff to continue to possess these materials. As a result, Plaintiff is ordered to return to Defendant the above described DVD within seven (7) days of this Decision and Order. If she fails to do so, the Court will entertain a motion by Defendant for the imposition of sanctions against Plaintiff, including monetary sanctions.

ACCORDINGLY, it is

ORDERED that Defendant's motion for summary judgment (Dkt. No. 30) is **GRANTED**; and it is further

ORDERED that Plaintiff's motion to reopen discovery (Dkt. No. 38) is **DENIED**; and it is further

ORDERED that Plaintiff's first motion for sanctions (Dkt. No. 46) is **DENIED**; and it is further

ORDERED that Defendant's first motion for a protective order (Dkt. No. 47) is **DENIED** as moot; and it is further

ORDERED that Plaintiff's motion to compel the disclosure of the personnel records of three employees (Dkt. No. 63) is **DENIED**; and it is further

ORDERED that Plaintiff's second motion for sanctions (Dkt. No. 64) is **DENIED**; and it is further

ORDERED that Defendant's second motion

for a protective order (Dkt. No. 52) is **GRANTED** to the extent that it requests that Plaintiff be ordered to return to Defendant the DVD in question, but is otherwise **DENIED**; and it is further

ORDERED that Plaintiff shall deliver to Defendant the requested DVD within seven (7) days of this Decision and Order. If she fails to do so, the Court will entertain a motion by Defendant for the imposition of sanctions against Plaintiff, including monetary sanctions; and it is further

ORDERED that, when Defendant receives the DVD in question, it shall file with the Court a letter stating that fact, whereupon a judgment shall be issued and this action shall be closed.

Dated: March 27, 2009
Syracuse, New York

s/

Hon. Glenn T. Suddaby
U.S. District Judge

APPENDIX C – RELEVANT STATUTES

U.S. Constitution: Seventh Amendment

Seventh Amendment - Civil Trials

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.*

42 U.S.C. §2000e-2. Unlawful employment practices

(a) Employer practices
It shall be an unlawful employment practice for an employer—
(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(d) Training programs
It shall be an unlawful employment practice for any

employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

ADEA, 29 U.S.C. §621 *et seq.*

29 U.S.C. §623 Prohibition of age discrimination

(a) Employer practices
It shall be unlawful for an employer—
(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against
any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;
(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or
(3) to reduce the wage rate of any employee in order to comply with this chapter.

APPENDIX D – ADDITIONAL MATERIAL

Case 09-1385-cv-DJ-JMM-RDS
U.S. Court of Appeals for the Second Circuit
Brief for Defendant-Appellee, p.1 Filed 08/07/09

DEFENDANT-APPELLEE'S RULE 26.1 STATEMENT

Defendant-Appellee Utica Mutual Insurance Company ("Utica Mutual") is a mutual insurance company organized under the laws of New York State. Utica Mutual has never been a publically traded corporation, has never issued any stock, and has never had a parent corporation. Utica Mutual is one of several insurance companies collectively referred to as Utica National Insurance Group. Plaintiff-Appellant erroneously denominated Defendant-Appellee as Utica National Insurance Group, Inc., which is not a legal entity.

STATEMENT OF JURISDICTION

Pro Se Appellant Grazyna H. Christman ("Christman") appeals a Judgment of the United States District Court for the Northern District of New York dated April 6, 2009. (A-34). The Judgment was entered in accordance with a March 27,2009 Decision and Order of the Honorable Glenn T. Suddaby which granted Utica Mutual's summary judgment motion and dismissed Christman's Complaint pursuant to Federal Rule of Civil Procedure 56. (A-16-33). Additionally, the Decision and Order ruled on six other motions, including (1) Christman's motion to reopen discovery, (2) Christman's first motion for sanctions against defense counsel, (3) Utica Mutual's first motion for protective order, (4) Utica Mutual's second motion for a protective order, (5) Christman's motion to compel disclosure

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 02/22/05 Termination Letter
Exhibit 43, p.1

[Logo]
NINA H. OWENS
Assistant Secretary
Director of Employment and Development
P.O. Box 530, Utica, New York 13503-0530
Telephone (315) 734-2221
Fax (315) 734-2495

February 22, 2005
Ms. Grazyna H. Christman
450 Elmdale Ave.
Utica, NY 13502

Dear Grazyna:
This letter is to confirm the termination of your employment and your employee benefits with the Utica National Insurance Group effective February 21, 2005.
I am enclosing the appropriate forms for continuation or conversion of your insurance, should you desire to obtain coverage.
You may also elect to continue your health coverage under your current group policy subject to the conditions and limitations outlined in the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Information regarding your rights under COBRA will be mailed directly from the Benefit Section of Home Office Human Resources. You will also find a certificate of group health plan

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 02/22/05 Termination Letter
Exhibit 43, p.1-2

coverage as required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) with your COBRA information.
You have 31 days from February 21, 2005 to convert your Group Life Insurance coverage to an individual policy for which you pay the full premium. If you wish to exercise this conversion privilege, please contact MetLife's toll free number 1-877-275-6387 or contact them via Internet at solutions@metlife.com.
Please complete, sign and date the following form: Disposition of Company Software form. Please return in the self-addressed envelope.
If you have automobile or homeowner's insurance coverages billed through payroll deduction or written with an "employee discount", your policy will be cancelled and rewritten on a direct bill basis.

Utica National Insurance Group Utica Mutual Insurance Company and its affiliated companies
Insurance that starts with you.

Ms. Grazyna Christman
February 22, 2005
Page 2

Information pertaining to your Employee Profit Sharing and Investment Plan and Flexible Spending accounts and your options due to termination of employment will be forwarded to you shortly. If you

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 02/22/05 Termination Letter
Exhibit 43, p.2

have any questions before receiving this information, please contact Teresa Evans (315) 734-2287 or Janet McLaughlin (315) 734-2594 section of the Human Resources Department.
You should contact Michelle Siriano, Credit Union, Ext. 2139 regarding your account.
Finally, enclosed is a check in the amount of $550.57, representing payment for the overtime worked during the period 2/10/05 – 2/19/05. Per your request, I'm also enclosing a copy of the time record you had prepared.

Sincerely,

s/
Nina H. Owens

NHO:ts
Enc.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff Employee of UNIG not UMICO
Exhibit 99, p.2

CLARKE PETERSON, CPCU, SPHR
Senior Vice President
Human Resources
P.O. Box 530, Utica, New York 13503-0530
e-mail: Clarke.peterson@uticanational.com
Telephone (315) 734-2735
Fax (315) 734-2495
December 13, 2004
Grazyna H. Christman
HO/Reinsurance Accounting

During the second quarter of next year, your employment anniversary will represent a milestone for you in your career at Utica National.

As we plan for that special occasion, we are asking for your help. Through our corporate service award program, the Company will provide several gift selections from which to choose to commemorate your anniversary. The help we need from you is to make that gift choice now. Of course, the presentation of the gift will take place on your actual anniversary during 2005.
Shortly, (appox. 2-3 weeks) you will receive an e-mail from our vendor, OC Tanner, detailing how to access your brochure and place your order. The e-mail, awardcenter@octanner.com, will contain a personal access code that you'll need to get into the website. Simply follow the online instructions to view your

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff Employee of UNIG not UMICO
Exhibit 99, p.2

year-level brochure and make your gift selection. Please note that some gift items, such as bracelets, specify a length. Please be sure to know your size before ordering. If the length is not large enough for your personal needs, please select another item from the available gift selections for the year level. Watches will specify a wrist size, but are typically similar to those you would find in a jewelry store. With the implementation of online ordering, individual wrist sizing will not be available. Finally, at the higher levels, rings may be available. Please be sure to order the correct ring size; ring sizers are available upon request. Questions may be directed to Denise Romanow at ext. 2736.

Please note that your selection should be made within 10 days of receipt of your e-mail. If you do not make a timely selection, a gift will be selected for you.

I hope you enjoy making your selection through out service award program. We'll be looking forward to the presentation in the coming months.

Sincerely,

s/

Clarke Peterson

CP:dtr

Utica National Insurance Group Utica National Insurance Group and its affiliated companies Insurance that starts with you

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff Employee of UNIG not UMICO
Exhibit 99, p.3

Utica National Insurance Group
<awardcenter@octanner.com>
01/01/2005 04:35 AM
To: Grazyna.Christman@notes.uticanational.com
cc:
bcc:
Subject: Utica National Insurance Group Recognition Award Notification
Dear Grazyna,

Happy Anniversary! Thank you for your 15 years of service with Utica National Insurance Group!

We are please to present you an award in recognition of this achievement. In an effort to make this event meaningful, please choose an award you will value. You can view the choices on your website at: http://www.eawardcenter.com/rb/0000124454/1
When you have found something you like, follow the simple instructions to place your order using your personal access number.
Your personal access number is 0077 31017 93142.
Each award is custom made. In order for your award to arrive in time for your anniversary, it is important that you order immediately.
Please do not reply to this email. It is for notification only. If you have questions regarding this message, contact our Awards Administration Center.
United States and Canada

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff Employee of UNIG not UMICO
Exhibit 99, p.3-4

envisionorder@octanner.com
888-708-7080
Outside the United States and Canada
Global @octanner.com
Congratulations – and thank you for your contributions to Utica National Insurance Group.
3
O.C.TANNER
The Recognition Experience

Congratulations, Grazyna H. Christman, on your 15 Year achievement with Utica National Insurance Group!

Your order has been processed.
Please print this screen for your records.
Your order number is 0104334782.
Selection
Man's Bulova Watch and Corporate Symbol Lapel Pin (Y)
To track your award order, visit www.octanner.com
Selection # 671
Scheduled Delivery Date 3/12/05
CONTINUE
To track your award order, visit www.octanner.com
ps://www.awardselect.com/weboe/Order.jsp?Comman
d=SubmitOrder 01/10/2005

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant's 04/27/05 Job Posting
Exhibit 94

Careers by Location Page 1 of 2
[Logo] Utica national Insurance Group
Insurance that start with you ℠
Home
About Utica National Locate an Agent
Insurance Protection Where to Find Us
Consumer-Customer Service Career Opportunities
For Agents & Brokers UticaLIFE
Career opportunities [logo]
Career Opportunities Home President's Message
Careers Overview Benefits Careers by Location
Careers by Department About Utica and the Mohawk Valley
Submit Your Resume
great products [logo/picture]
great service [logo/picture]
great people [logo/picture]
Job Back to Listing
Job Title: Reinsurance Accountant (Full Time)

Date Posted: 4/27/2005
Department: Reinsurance

Job Description: Complete necessary workpapers for monthly, quarterly and annual statements. Responsible for reinsurance accounting processing; including billings and collections of reinsurance recoverables, payment of reinsurance contract

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant's 04/27/05 Job Posting
Exhibit 94

premiums, completion of Schedule F for the annual statement, general ledger reconciliations, updating of relevant processing tables and maintaining and/or updating relevant PC applications. Process and complete the related reinsurance requirements on a quarterly and annual basis for various insurance regulatory departments. Complete various other related accounting work for reinsurance processing as needed. Ability to meet deadlines and processing constraints is important.
Qualifications: 4-year Accounting degree or equivalent work experience is required. At least 2 years of previous accounting experience is preferred. IIA Insurance coursework a plus. Extensive PC skills required. Knowledge of Excel preferred. Overtime required when necessary.
Office

Office: Home
Office Address: 180 Genesee Street
New Hartford, NY 13413-2299

Human resources
E-mail: HR.Applications@uticanational,com
Fax: 315-734-2495
Attach Resume Here:
[Box] Browse [button]
To attach a file (1) "Browse" your directory to locate file, (2) select file name, (3) select "Open"

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant's 04/27/05 Job Posting
Exhibit 94

Files must be 2 MB or less in size.
Submit [button]
http://www.uticanational.com/CareersOpps/HR_JobDescription.asp?JobCode=Accountant...
[circle around the date, arrow and handwritten]
opened as 9/20/05

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
SDHR 04/13/05 Verified Complaint
Exhibit 47, p.1

[Logo] STATE OF NEW YORK EXECUTIVE DEPARTMENT DIVISION OF HUMAN RIGHTS
333 EAST WASHINGTON STREET, ROOM 443
SYRACUSE, NEW YORK 13202 (315) 428-4633 Fax (315) 428-4638 www.nysdhr.com GEORGE E. PATAKI, GOVERNOR APRIL 13, 2005 MICHELLE CHENEY DONALDSON COMMISSIONER
Grazyna H. Christman
450 Elmdale Ave. Utica, NY 13502 (315) 733-6687
Re: Grazyna H. Christman v. Utica National Insurance Group SDHR Case No. 10105010
Dear Grazyna H. Christman:
Please be advised that this office has received your verified complaint and it is now part of the Division's case load. The Division, except for critical exceptions, investigates complaints chronologically by date of filing. Your filing date is 4/13/2005.

You will be contacted by the Human Rights Specialist assigned to your case when the active investigation of your complaint begins.
Please notify us immediately of any change in your address and telephone number should you move. A form is enclosed for this purpose.
To protect your rights, it is essential that the Division be advised promptly at all times of any change of address. Thank you for your cooperation.
Very truly yours,
Forrest Cummings, Jr. Regional Manager

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 46-2
Motion for Sanctions against Defendant's
Counsel Filed 07/31/08
Stefan E. Berg, Esq., Retainer Agreement
Attachment No.2, p.4

8. Disputes under this Agreement. If you dispute that you owe any attorney's fees that may be biller by our firm, you have the right to elect to resolve that dispute by arbitration, under the Rules of the Chief Administrator of the Courts, Part 137. This arbitration proceeding is not available if the dispute is for less than $1,000 or more than $50,000. If I learn that such a dispute exists, I will send you a notice telling you how to file for arbitration.
9. Entire Agreement. This is the entire agreement between us. It may only be modified by a writing which we both sign. By signing this letter, you indicate that you have read it, fully understand it, and agree to its terms. Your signature also indicates that I have answered all of your questions and fully explained this agreement to your satisfaction.
If the terms of this agreement are fully acceptable to you, please date and sign it below and return it to me, along with your payment due.
I look forward to continuing to work with you. If you have any questions or concerns, please give me a call.
Sincerely yours,
s/
Stefan D. Berg
I have read this retainer agreement, and agree to its terms. Dated: December 26, 2005
s/
Client: Grazyna H. Christman

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 46-2
Motion for Sanctions against Defendant's
Counsel Filed 07/31/08
12/22/07 Letter from Stefan E. Berg, Esq.
Attachment No.4, p.1

Stefan D. Berg, Esq.
Attorney and Counselor at Law
BERG LAW OFFICE
309 Arnold Avenue
Syracuse, New York 13210
(315) 476-0806

December 22, 2007

Grazyna Christman
450Elmdale Avenue
Utica, N.Y. 13502

Dear Ms. Christman:
I am writing to provide you with my thoughts regarding further work on your case against the Insurance Company. I have reviewed the transcripts of the depositions and the documents in the file.

After careful analysis and thought, I must advise you that there is insufficient evidence of age, gender or disability discrimination for a court to rule in your favor. In my opinion, the outcome of a motion made the Utica National for summary judgment will result in the court granting that motion on all counts.
It is possible to meet with a Judge for the purpose of mediating or to discuss resolution. However, that will not alter the ultimate outcome. Utica National can

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 46-4
Motion for Sanctions against Defendant's
Counsel Filed 07/31/08
12/22/07 Letter from Stefan E. Berg, Esq.
Attachment No.4, p.1-2

demonstrate facts sufficient to show entitlement to Summary Judgment. There is no legitimate basis to oppose that motion.

I know that you feel strongly that the decision to terminate you was discriminatory. And it may have been. However, there have been no facts set forth in the record at the Division of Human Rights or in this court case that supports that position.

In order to settle this and to avoid the time and expense of making that motion, it is possible that Utica National will agree to pay you a sum equal to their cost to make the motion. The sum of money appropriate at this juncture is in the range of $5,000.00 to $8,000.00. I have not discussed your case with their attorney since the deposition, but they know that this is the cost to make a motion and obtain a ruling.

Grazyna Page2

It is my recommendation that you authorize me to engage in that discussion with their attorney in the hope that they will agree to pay some money to avoid the time and expense of making the motion.

Kindly advise me how you wish to proceed.

Very truly yours,
s/
Stefan D. Berg

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-1
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 01/29/02 Memo
Exhibit 6, p.1-2

[Picture]
Frances.Richards@UTICANATIONAL.COM
01/29/2002 11:04 AM
To: Grazyna.Christman@ UTICANATIONAL.COM
cc:
bcc:
Subject: Reorganization

Date: Tuesday, 29 January 2002 11:04 =am ET
To: AP/Purchasing/Tax, Credit.Collections, Data.Management, Financial Reporting, Research
Cc: Rick.Beideleman@UTICANATIONAL.COM, Werner.Franz
From: Frances.Richards@UTICANATIONAL.COM
Subject: Reorganization
Please see the attached memo from Tony.
----- (SEGMENT 4 IS UNVIEWABLE PC ATTACHMENT NAMED REORGANI.DOC

1

Utica National Insurance Group
Memo
To: Finance Staff
From Tony Paolozzi
[Handwritten] FORMULA PULLS THE DATE WHEN PRINTED → Date: 05/25/2004

First, I would like to address with you the recent correspondence from Mr. Robinson regarding our results, issues facing our company, and staffing

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-1
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 01/29/02 Memo
Exhibit 6, p.2

changes that are necessary. In time like this, difficult decisions have to be made. You are probably wondering if any jobs in the Finance Department will be affected. Goals were established for each major department to bring the company's salary budget to an acceptable percentage of premium income. While it may not be immediately evident, it is important for you to know that our department was able to accomplish our established goal without affecting current employees. In developing the salary budget, it was decided that my previous position would not be replaced and a vacancy in Credit & Collections was eliminated. I am sure that you feel as good as I do about this.

I also want to advise you of a reorganization within the Finance Department that will be taking place later this year. Over the past three years we have had two outside consultants review our reinsurance function. Both observed that there is not one department entirely responsible for all aspects and therefore accountable for performance and profitability. Both recommended that we should centralize, within the Reinsurance Department, the implementation and ongoing administration responsibilities currently in Financial Reporting. These include implementing new/changes to reinsurance contracts, settlement of premiums (facultative & treaty), billing and collection of losses, profit commission determination, profitability

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-1
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 01/29/02 Memo
Exhibit 6, p.2-3

analysis, preparation of annual statement schedules, commutations and probably some others. This reorganization will put, entirely within the Reinsurance Department, the responsibilities starting with contract negotiation to implementation to administration. This should benefit us by improving contract negotiation, communications, reinsurance analysis, enhancing accountability and eliminate the current disconnect

• Page 1 2

that happens at times because the entire process is separated. This would of course mean reassigning staff currently in Financial Reporting to the Reinsurance Department. In addition, a new position, in place of Werner Franz (who is retiring 3/1), has been established which will oversee much of these responsibilities and supervise the staff reassigned. Mike Evolo, who was previously underwriting supervisor in ERO, will be taking this new position effective immediately. Mike's experience in commercial underwriting and his accounting education makes him an excellent addition to the reinsurance function. Since Mike needs to get "up to speed" in reinsurance, we are going to hold off the reassignment of responsibilities and staff until later this year. In addition, since much of the work will continue to support our financial statement process, the reinsurance Department will be accommodated on the sixth floor. To accomplish this, IT Systems will

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-1
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 01/29/02 Memo
Exhibit 6, p.3

need to be relocated.
It was my desire to deliver this in person, but I am out of the office on personal business and I did not want you to hear this by way of the "grape vine". I know change is something difficult and always present challenges. I am confident the people directly involved are up to the challenges and will be successful. I hope they can count on everyone's support during the transition. If anyone has any questions about either issue please feel free to come see me.
Thanks. Tony.
• Page 2 3

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.1

STATE OF NEW YORK
FIFTH JUDICIAL DISTRICT
SUPREME COURT COUNTY OF ONEIDA
* * * * * * * * * * * * * * * * * *
GRAZYNA H. CHRISTMAN
Plaintiff
-vs- Case No. 6:06-cv-1392
UTICA NATIONAL INSURANCE GROUP, INC.,
Defendant
* * * * * * * * * * * * * * * * * *

HELD AT: GETNICK LIVINGSTON, ATKINSON, GIGLIOTTI & PRIORE, LLP
258 Genesee Street
Utica, New York
November 7, 2007

EXAMINATION BEFORE THE TRIAL of GRAZYNA H. CHRISTMAN, taken by the Plaintiff, pursuant to Notice.

APPEARANCES:

STEFAN D. BERG, ESQ.
Attorney for Plaintiff
309 Arnold Avenue
Syracuse, New York 13210
GETNICK, LIVINGSTON, ATKINSON, GIGLIOTTI & PRIORE, LLP

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.1,30

Attorneys for Defendant
258 Genesee Street
Utica, New York 13502
BY: JOSEPH A. DETRAGLIA, ESQ., of Counsel

30

A. I couldn't understand why my performance review was prepared the way it was prepared, why the annual review didn't meet expectations, why I didn't get the raise. I questioned it. I wanted to elevate it to the higher level. I was told by Michael to keep in mind the ramifications of my job if I do that. All of the situations like that basically made me get to the point where I wasn't able to deal with it on my own.

Q. Did you say, at that time, to your healthcare providers that you thought the company was trying to get rid of you because of your age?

A. I don't recall it.

Q. Do you recall if you told your healthcare providers

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.30,32

that you felt the company was trying to get rid of you because
of your gender, being a woman?
A. I probably explained that the department has only
three employees, the three younger males and the older one,
the female. I did express that in July when I was left out of
the participation in the survey. I did put in the reply, in
the e-mail to Michael, that the choice of the participants.
felt somewhat discriminative to me based on the fact that we
had only three employees and he chose two males and the
younger employees. I didn't say directly, but I had my
concerns.
Q. Do you know, was he obligated to give you that
survey to fill out?

32

A. I did put it in the e-mail that's how I felt.
Q. And you still feel that way?
A. Yes,
Q. And it was discriminatory because of what?
A. The evaluation was to – The purpose of the

Appendix D
Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.32

survey
was to give a picture – an evaluation of Evolo's performance
as a manager, a supervisor. And there were only three direct
reports, two male employees and myself. The explanation that
I received was that he wanted to give it a wider scope, so he
selected someone outside of the department. My question was
that why wasn't it a woman from within the department, a male
and a female, or the youngest and the oldest, or the middle
and the oldest, the selection. I questioned his choice,
basically.
Q. So you were the only female of the three of you?
A. In Evolo's department.
Q. So you think it might have been discriminatory
because two males were given the survey, but you weren't as
the female?
A. I was left out.
Q. Do you think you were left out because of your age?
A. Yes.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.32-33

23 Q. Do you think you were left out because of your .
24 medical condition?
25 A. In the case of the survey?

33

1 Q. Yes.
2 A. I don't know that.
3 Q. Do you believe that was the case?
4 A. Could be, I cannot answer that question.
5 Q. Did you fill out the survey?
6 A. Yes. I did it like three weeks after the deadline.
7 Q. Do you know what happened with your survey after you
8 filled it out?
9 A. I was told that it was included in the results.
10 Q. At what point in your employment with Utica Mutual
11 did you first feel discriminated against?
12 A. I started questioning the things which were
13 happening, the evaluations, the facts which I was presented
14 with, which were not describing my performance in the best
15 light, in May 2004, after or during the nine-months normal
16 review through the end of the employment.
17 Q. Let me ask this, then: Prior to 2004, did

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.33-34

you feel
18 the company was discriminating against you in any way?
19 A. What I felt was that Michael Evolo was
20 discriminating against me. Michael was employed by the
21 company as my supervisor.
22 Q. And when did you begin working under Mr. Evolo?
23 A. In 2002.
24 Q. How soon after you began working under Mr. Evolo did
25 you feel you were being discriminated against?

34

1 A. My first concern was in May of 2003. That was when
2 the promotion to Senior accountant – the promotion went to
3 one of my co-workers who was promoted to a Senior Accountant.
4 At that point, I was questioning the merits. At that point, I
5 had brought the company over a quarter of a million dollars in
6 contingent commission due from Hartford Steam Boiler. That
7 was recognized by the upper management, Rick Beidleman, who
8 was Michael's supervisor, the Director of

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiffs Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.34-35

Reinsurance. It was
recognized by other individuals in upper management. Mr.
Beidleman stated that thanks to my initiative, that
perseverance, the company would be receiving the contingent,
which went back far to 1998, 1999 and was originally accrued
for $85,000 and the company ended up receiving over $300,000,
not a quarter but one-third of a million.
Q. Did you say that was in May 2003?
A. That was in January, February.
Q. Of 2003?
A. Right. The promotion of the male employee was in
March, and it was advertised, let known in the company paper
in May.
Q. Did you receive a performance review in 2003?
A. Yes.
Q. What was the rating?
A. It was positive.
Q. What month of 2003?

35

A. August.
Q. That was the first time you felt

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.35

discriminated
against, right?
A. I felt I was bypassed for the promotion. I felt the
merit warranted the promotion, plus my other performance.
Q. What do you mean by your "merit" and your "other
performance"?
A. the contingent commission was a special project that
I spent hours working on with people from Hartford Steam Boiler,
in short, HSB,
Q. Do you think you merited the promotion just based on
that project?
A. No. That was a big accomplishment, which was
recognized by Mike Evolo's superiors. It was merely mentioned
by him in my performance review.
Q. Do you feel you were the most qualified person for
the promotion?
A. What do you mean "the most qualified"?
Q. Do you feel you were more qualified that the person
who received the promotion?

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.35-36

A. I felt I was more knowledgeable, and in terms of the qualifications, to a certain degree, yes.
Q. Can you explain what you mean by that?
A. The reinsurance background, the formal insurance courses.

36

Q. That you had or the other –
A. that I had that the other person didn't have. My co-worker signed up right away for the reinsurance course and failed it, and regardless, was promoted.
Q. Did you take the reinsurance course at that time?
A. I did sign up for the reinsurance course in the fall, I believe, 2003.
Q. Did you take the reinsurance course in the fall of 2003?
A. It was a self-study.
Q. And did you complete it?
A. I did take the exam. I didn't pass the exam.
Q. Did you retake the exam?
A. I did sign up again in September of 2004, and in October of 2004, I had to pull out because of my

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.36-37

surgery.
Q. Did you feel that anyone in the company other than
Mr. Evolo was discriminating against you?
A. I was dealing with Michael Evolo, so I didn't really
have a chance to experience any incidents with anyone else. I
reported to Mr. Evolo, and the incidents that took place were
related to interactions with Mr. Evolo.
Q. As you are sitting here right now, today, is there
someone other than Mr. Evolo that you believe discriminated
against you?
A. I don't know the answer to that question.

37

Q. What ways did Mr. Evolo discriminate against you, in
your opinion?
A. I was the oldest employee. The overall perception
is that the older employee is not as effective as the younger
one, is not a computer whiz. The first, thing, I was bypassed
for the promotion. It was given to a younger employee. I was

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.37

declined the learning opportunities which were extended to both younger co-workers. What I mean by that is the trips to New Jersey for the annual meeting with the reinsurance broker, which gave both of my co-workers first-hand experience. They both accompanied Mr. Evolo on the annual trips. I was not included.

Q. Do you know who selected the individuals for those trips?

A. I presume Mr. Evolo.

Q. Earlier, you just said that there is an overall perception about older workers, is that right, what you just testified to?

A. The overall perception about older workers, the stereotype.

Q. Well, are you saying Mr. Evolo had that perception of you?

A. When I started working for Mr. Evolo, I turned fifty in 2002. The fifties, according to a study I did, the

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.37-38

25 research is traditionally the year where the employee

38

1 basically doesn't go any further, doesn't advance himself.
2 Q. You did a study or research?
3 A. I did read a book published in 2006, which explains
4 basically aspects of employment of the older employees and the
5 stereotypes in our society.
6 Q. That book, that had to do something to do with age
7 discrimination?
8 A. Yes.
9 Q. Did Mr. Evolo make any comments about your age?
10 A. Mr. Evolo didn't make any direct comments, either
11 directly to me or in front of the other employees when I was
12 present.
13 Q. Did he make comments about your gender being female?
14 A. Not that I can recall right now.
15 Q. Did he make any direct comments about your medical
16 condition?
17 A. Yes.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.38-39

18 Q. Could you describe, or have you already
19 described those?
20 A. No, there is an incident that I didn't mention.
21 Before my third thyroid surgery, when I was supposed to be schedule
22 for a test to block the nerve, the laryngeal nerve in my
23 throat to see if it basically stopped the cough, I asked for
24 the medical time off. I explained the procedure, and Mr.
25 Evolo's comment was, "Whv wouldn't the doctor's do it in the

39

1 first place, before the surgery, instead of right now?" Mr.
2 Evolo made the comments when I was scheduled for the surgery
3 and I was asking for the time off to drive to Cooperstown for
4 the test or the appointment with the surgeon. Basically, he
5 would make comments like that my scheduling the surgery is not
6 very convenient for the department.
7 Q. Do you know, was it convenient for the department to
8 have you out at that time?

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.39-40

A. The department had three employees, three accountants. I was Accountant I, the grade nine. There was an Accountant II, grade eleven, and there was Senior Account, grade thirteen. So I was on the bottom

Q. Well, when did you take your medical leave – Did you take medical leave in 2004?

A. Yes.

Q. When?

A. The surgery was on November 11th, and I was back to work on December 27th.

Q. At that time in 2004, was the end of year a busy time for the reinsurance unit?

A. The end of year is a busy time every year.

Q. Can you just describe what you mean by "end of year"?

A. The reinsurance company has to prepare the financial statements required by the State.

40

Q. And what time of the year? Is there a specific month or months?

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.40

A. January, February, after the books are closed.
Q. Would you describe January and February as the busiest time of year in the reinsurance unit?
A. January is the month when the financial statements have to be completed and submitted to the State Department.
Q. So that was – Was that a very busy time, January of 2005?
A. Right, and I was back in January. I was back on December 27th.
Q. Was November and December of 2004 a busy time for the reinsurance unit?
A. It would entail the monthly tasks and the quarterly tasks. Before my disability, I completed a multitude of tasks which were given to me by Mr. Evolo, I did put in may hours of overtime to complete them.
Q. Were there any other comments Mr. Evolo made to you about your medical condition that you believe were

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.40-41

20 discriminatory?
21 A. I cannot recall right now.
22 Q. You just described a comment from Mr. Evolo right
23 before you went for your surgery in November of 2004?
24 A. Right, that it was inconvenient scheduling, the
25 scheduling to remove the growth on my thyroid.

41

1 Q. I ask you to look at Exhibit C again, your third
2 paragraph at the bottom of the first page, that you believe
3 that the reason given for the dismissal decision of poor job
4 performance, you believe that decision was reached by Mr.
5 Evolo by, and I quote, "holding me to a different standard of
6 job performance than my comparably situated younger male
7 co-workers." Is that your belief?
8 A. The poor performance – poor job performance was the
9 pretext for my dismissal. Mr. Evolo held me to a different
10 standard of job performance than my co-workers.
11 Q. If it was a pretext, then what was the real

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.41-42

reason
for your dismissal?
A. Age and my medical condition.
Q. And who are the comparably situated younger male
co-workers?
A. Josh Watkins. Accountant II, and David Raga, Senior
Accountant.
Q. And how did Mr. Evolo hold you to a different
standard of job performance than those two individuals?
A. One of the examples would be flexibility offered
to – extended to younger employees in regard to their
completions of the reinsurance ARe designation. After I had to
pull out, withdraw from the study in the fall of 2004,
Mr. Evolo insisted that I immediately sign up in January right
after my surgery. My co-workers were extended the flexibility

42

to take years to complete it.
Q. Now, in your opinion, working as an accountant in

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.42

the reinsurance department, would the ARe designation have
been helpful for your job.
A. Yes.
Q. But why didn't you want to sign up again in January
2005?
A. I was back from my surgery and we had the financial
statements to complete.
Q. When did you plan on – Did you ever plan on signing
up for that?
A. yes, I let Mr. Evolo know that I would do it later
in the year in 2005.
Q. Do you know if the other two individuals received
that designation?
A. To my knowledge, they didn't.
Q. Were there other ways Mr. Evolo held you
to a different standard of job performance than those two
individuals?
A. My mind is blank right now. Can we take a break, or
is it lunch time? Oh. I have to answer the question.
Q. Well, as best as you can.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.42-43

23. A. The other standards that were different that the
24 younger employees? I wasn't offered the same learning
25 opportunity. The job descriptions that explained what were

43

1 the responsibilities of each position and what were the
2 requirements of the position in terms of credentials and
3 the experience. My credentials, my experience, were not
4 recognized in any way. My co-workers were. The tasks that
5 were assigned to me to complete were actually the tasks to be
6 completed by the accountant that worked independently.
7 Accountant I was supposed to work under the guidelines of
8 Accountant II or the Senior Accountant. I was treated as if I
9 was on the same level, grade-wise, job-wise, as the other two
10 accountants.
11 Q. And just so I am clear, which credentials or
12 experience did you feel that you were not recognized for?

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.43-44

A. My MA, Master's Degree.
Q. What was that in?
A. Economics.
Q. Anything else?
A. The Certificate of General Insurance, which I completed in the nineties while at the company, the underwriting courses which gave me the formal insurance and reinsurance background.
Q. Was it your belief that those credentials were not recognized at all by the company?
A. Yes. They were not mentioned in my review at all. They weren't brought up in the meetings. When Josh Watkins was signing up for the next semester at the collage, that was

44

discussed, but at no point was my knowledge or my credentials brought up. When I asked Mr. Evolo if he was aware that I have a degree, his answer was, "No."
Q. Which degree, the Master's?
A. MA.
Q. You say MA in Economics. Is that the

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.44

degree?
A. Yes.
Q. Did you feel that you were held to a different
standard of job performance as far as the categories in the
annual performance review?
A. The performance review was a standard form . So this
was a pre-populated form, and basically, the supervisor was
adding the comments and his own evaluation, which I felt was
very subjective in my reviews because of the statements which
Mr. Evolo made. In Mr. Evolo's statement, "I believe that she
does" – that nature of comments. He would put that it was
his impression that he believes that I did something, which
was very subjective. Basically, my performance review was
lacking objectivity.
Q. Did you ever get the opportunity to look at the
performance reviews of the other two individuals?
A. That was forwarded to me by the Division of Human

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.44-45

Rights.
Q. Is it your belief that he was subjective in his
reviews of those two individuals?

45

A. I didn't notice the words used in my review, where
Mr. Evolo said, "To my disbelief, she" – and whatever was the
statement, "I did" or "I feel." It's not an
objective statement. It's a person's perception.
Q. You saw that in you own performance reviewed, right?
A. Right.
Q. Did you see it in the other performance reviews?
A. I didn't notice it.
Q. Any other way you felt that his performance review
of you was more subjective than the other two individuals?
A. Yes. That's how I learned about flexibility
with the deadline for completion of the ARe designation. The
deadline for David Raga was moved from year to year, extended
into 2006, 2008.
Q. And when did you first learn that? By reading the

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.45-46

16 evaluations?
17 A. By reading the documents forwarded to me from the
18 Division of Human Rights.
19 Q. Is there any other way that you believe Mr. Evolo
20 held you to different job performance standards than your two
21 co-workers?
22 A. I was – What was different, I was not allowed to
23 ask for help. I was supposed to work on my own, without
24 asking the questions, doing the research on my own, going back
25 to the folders from last year, instead of asking Accountant II

46

1 or Accountant III for help if I wasn't clear on something.
2 Q. Did you ask for help from your two co-workers?
3 A. Yes.
4 Q. Did they give you help?
5 A. No.
6 Q. Ever?
7 A. O cannot say ever or never. The situations where I
8 would ask Accountant II a question, how to

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.46

handle something
9 the response would be either in person or via e-mail: " I
10 don't know the answer. I don't handle it," or, "Check with
11 Financial Reporting." Which was the Corporate Accounting.
12 Q. When you say you were not allowed to ask for help,
13 what do you mean by that?
14 A. Mr. Evolo wanted me to do everything on my own
15 without engaging the other team members in exchanging whatever
16 experience they had or clarifying whatever I didn't know. He
17 was giving me the specific instructions to not to ask Josh or
18 David.
19 Q. Is it your belief that Mr. Evolo wanted you to have
20 no interactions with your co-workers?
21 A. No. That's not what I said.
22 Q. Did Mr. Evolo allow you to have interactions with
23 your co-workers?
24 A. Yes.
25 Q. So I'm just trying to clarify. You were allowed to

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.47

47

have interactions, but you weren't allowed to help – to ask for help; is that correct.

A. What I was explaining was when a task was assigned to me and it was either new or I wasn't certain about something and I needed clarification, instead of being allowed to ask more experienced Accountant II or Senior Accountant, I was specifically told not to ask them and get the answers from last year's folders.

Q. And was that every time or sometimes? How frequently?

A. It was very frequent.

(Whereupon, a brief recess was taken.)

(The last question and answer were read by the Reporter.)

Q. Ms. Christman, if you could please look at the second page of Exhibit C, there is a paragraph number four. Is that the leadership survey that you have already testified about today that you felt you were excluded from?

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.47-48

19 A. Yes.
20 Q. Is there anything more about that that you would
21 like to discuss that you haven't already testified to today?
22 A. Not at the moment regarding the survey, the
23 leadership survey.
24 Q. Paragraph number five, why did you use – or do you
25 believe that the nine-month review was arbitrary?

48

1 A. I had a nine-month performance review which brought
2 up supposedly poor performance or tasks that were not
3 completed or done wrong. And this was the very first one I
4 ever had during my career with Utica national, the review in
5 between the annual review.
6 Q. Until that point, how often did you receive
7 performance reviews?
8 A. On an annual basis.
9 Q. Why did you feel that the nine-month review was an
10 arbitrary review?
11 A. I don't know if I used the term "arbitrary." It

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.48,50

was basically a nine-months review to bring, supposedly,
Evolo's concerns about my performance.
Q. The end of it, paragraph number five, says that no
such review occurred And what does that refer to?
A. The follow-up in thirty days.
Q. Why do you believe that was a problem, or do you
believe that was a problem that it says "No such review
occurred"?
A. Mr. Evolo suggested that we have regular meetings to
monitor my performance improvement, and we had one meeting,
all together.
Q. What meeting was that?
A. I don't recall the day right now. There was one
instance where we discussed it.

50

A. Correct.
Q. If I could ask you to look at the fourth page,
starting around paragraph number twenty-three, is that
statement in paragraph twenty-three that you did receive a

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.50

performance evaluation in August 2003?
A. In 2003, I received an annual performance review.
Q. That's the one I asked you earlier about. What was your rating on that one?
A. In 2003 was "meets."
Q. On a scale of one to five, that was –
A. I believe it's three. The date is a typo on this line. It should be in August of 2004. My nine-month performance review was in 2004. I didn't catch that mistake when I was reading it.
Q. Moving to paragraph twenty-five: "Subsequent to 2003, Mr. Evolo gave Plaintiff performance evaluations which indicated that her performance was declining," and then paragraph twenty-six says: "in fact, Plaintiff's performance did not decline.", is it your belief that your performance did not decline after 2003?
A. My performance did not decline at anytime during my career with Utica.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.50-51

23 Q. How did you measure your own performance, to know
24 whether it was declining or not?
25 A. The job responsibility entailed specific tasks which

51

1 were my monthly, quarterly or annual responsibility, and the
2 timely completion, the final result.
3 Q. How were you informed of your specific tasks to
4 perform?
5 A. Each of us had to submit a list of responsibilities
6 that we had to Mr. Evolo.
7 Q. How often did you submit that list?
8 A. The list wasn't subject to a change. The tasks on
9 the list were submitted once, and again, if tasks were added.
10 But the tasks that were previously on the list of the other
11 accountants, my co-workers, were shifted to me. I was
12 basically performing the job – I was supposed to perform the
13 job on the same level as the higher-situated co-workers.
14 Q. Did you create a list of tasks?

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.51-52

A. Yes.
Q. And did your co-workers create lists of tasks?
A. I wouldn't know, because it was sent to us, the request that each one of us submit it. I did submit mine.
Q. Who did you submit that to?
A. Mr. Evolo.
Q. And when did you submit that to him?
A. I believe the last copy I forwarded of the original list was in October of 2004. It was right before my surgery. Mr. Evolo wanted to know what needed to be done in my absence.

52

Q. Why do you say you were asked to perform job duties that were duties that should've been performed by your co-workers?
A. That's not correct statement. The accounting position had three different levels. The lowest was Accountant I, and the responsibility of the Accountant I was to somewhat work with other help, but the Accountant I wasn't

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.52

responsible for entirely finishing on its own the financial statements. The Accountant I was supposed to get help and training and coaching from Senior Accountant and Accountant II. It was part of their job responsibility. The way the tasks were assigned to me, I had to perform the tasks which were described in the position for the Senior or Accountant II. So basically there was no distinction. I was put on he same level and the same type of responsibility was expected of me.

Q. Meaning that you believe that the tasks that you were assigned were of the same level as those assigned to your co-workers?

A. the tasks actually were reassigned from co-workers to me. An example is Commerce Survey, which was originally done by David Raga and became my responsibility.

Q. Did David Raga give you any other tasks to perform?

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.52,61

23 A. No. It wasn't David Raga. It was Michael Evolo
24 that gave me the task, not David Raga.
25 Q. Who gave you the Commerce Survey task?

61

1 A. Yes.
2 Q. Is there more you would like to explain at this
3 time?
4 A. Other than what I mentioned earlier. Basically,
5 what was expected of me is perform on the same level as the
6 higher graded co-workers. I was held to a higher standard.
7 Q. When you say that you didn't explain in your
8 rebuttal the disparity treatment, you've explained that today,
9 the feeling like you had to perform at a higher grade that
10 your co-workers were at, you were held to higher standards and
11 weren't given the same flexibility in completing tasks or in
12 furthering your education; is that right?
13 A. No.
14 Q. Well, then, could you please explain?
15 A. I did put in the rebuttal that other workers

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.61-62

were
16 treated differently. I was referring to the statement that
17 younger employees get a different treatment, that I'm only
18 female, the female that has the disability, the medical
19 impairment. It's all throughout the rebuttal in the
20 applicable sections. What I reiterated today was the
21 instances where it is shown being held to a higher standard,
22 having different expectations placed on me. The lack of
23 flexibility with forgoing my education, not recognizing the
24 education that I had, the credentials, not recognizing any of
25 the positive tasks that were completed. Anything that's

62

1 brought up is just the negative, but not the – Basically, the
2 picture presented by Michael Evolo is an isolated. It's a
3 snapshot, not the entire picture
4 Q. The Division of Human Rights gave you the
5 opportunity to submit a rebuttal, right?
6 A. Yes.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.62

Q. And you did submit a rebuttal?
A. Yes.

Q. And then you did further research on the Internet,
right?
A. Yes.
Q. Are there any other instances where the company
discriminated against you that were not submitted by
you in your paperwork?
A. Michael Evolo discriminated against me. Michael
Evolo worked for the company. The company was vicariously
liable for his actions as he was engaged in a managerial
capacity.
Q. Have you described today all the discriminatory acts
that Michael Evolo took against you?
A. To my best recollection right now. Can I add
something?
Q. Yes, you can.
A. There is one thing I forgot. In regard to the
actual probation, the way it was administered to younger

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.63

63

employee to the older employee. I was placed on probation and
fired thirty days later, or a month and a half. The other
co-worker was placed on probation twice and taken off twice
and given much longer time for improvement in performance. I
was given thirty days. The younger employee was given six
months on the first one, I believe, or twelve month on the
second, or vice-versa. I don't recall exactly.
Q. Do you know which younger employee co-worker?
A. Josh Watkins.
Q. Do you know if he is still employed by the company?
A. I don't know.
(Defendant Exhibit G marked for Identification.)
Q. Please take a look at this document, Exhibit G, and
let me know when you are done.
A. Okay.
Q. Is this the August 2003 performance review that you
have already testified about today?
A. We discussed some of the aspects, yes.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.63,67

20 Q. But this is your annual performance review for 2003,
21 correct?
22. A. Correct,
23. Q. And on page 5, at the bottom, it has
24 overall rating?
25 A. Its rating is: "Meets expectations for the

67

1 describe what this document is?
2 A, Mr. Evolo prepared for me a nine-month performance
3 review in May of 2004.
4 Q. is there anything inaccurate in this performance
5 review?
6 A. The examples in this performance review were taken
7 out of context. Those were selectively chosen examples
8 which do not present the entire picture, the complete picture.
9 Q. What is missing in order to complete the picture?
10 A. Basically, each item requires more detail to
11 present – to explain what has happened. The statement that
12 the settlements were not completed by me is not accurate, for
13 the reason that, at that time, in the beginning of

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.67,70

2004, the
14 accountant, all three of us, were specifically instructed by
15 Michael Evolo to put everything on hold and concentrate
16 on the Schedule F. Here it says: "This is one of your
17 responsibilities that is expected to be completed in a timely
18 fashion."
19 Q. Is this the first page?
20 A. Yes. It says: "Completion of the contract
21 settlements should be a priority." Now, as far back as they
22 go in the files, the files for the prior years, those were
23 always completed around the end of February, March.
24 Q. Is there anything else inaccurate in this?
25 A. The statements are very subjective and not accurate.

70

1 believe Mr. Evolo's May 11, 2004 performance review was not a
2 complete picture of your performance?
3 A. This document explains what has happened, meaning
4 that when Mr. Evolo referred to the statement that I failed to

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.70

prepare the part A for the Utica Specialty Risk and Lloyds, I explained that I was not aware that the word "non" had become a part of the annual statement. Out of the three accountants in the reinsurance department, I was the one who had the least experience or smallest part or percentage exposed to the Schedule F prior to reorganization. The reply was that I asked help with handling of time-sensitive tasks.

Q. Well, again, this was your response to his written May 11, 2004 performance review, right? Is that right?

A. Those were the comments to the issues the issues addressed by Michael Evolo in my nine-months' review.

Q. You prepared it in a short time after you received his May 11th performance review?

A. It took me actually two weeks. I was on vacation the last week in may. I did it on my time at home

Q. And what was your purpose in giving this document to Mr. Evolo?

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.70-71

22 A. In my opinion, the eleven-month evaluation was not
23 accurate. It did not present my performance, It was
24 distorted. It addressed the selectively chosen examples.
25 Q. Is there anything more that you are thinking of

71

1 today that you would add to this document to illustrate why
2 the May 11, 2004 review was inaccurate?
3 A. I did attempt to do it by a continuation in the next
4 reply. I, all along, didn't get the answer of what I am doing
5 wrong and what is happening, and I was questioning it. Since
6 the promotion of the younger male co-worker to the Senior
7 Accountant back in 2003, my earning the company $330.000,
8 one-third of a million, I started questioning what is going
9 on. I started wondering. The purpose of it was to get
10 answers to my questions, to my concerns.
11 Q. Is there anything more that you would add today to

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.71-72

this document in order to explain why your disagreed with the
May 11, 2004 review?
A. The document explains the inaccuracy of the
statement put in the May 11th of 2004, where the facts were
either distorted or not complete. That pertains to conflicts
with my Fleet employment, where I explained that out of my own
initiative, I arranged with Fleet for the vacation time, the
days of on the weekends, so I could come and work on the
Schedule F. I explained that I put in over one hundred hours
of overtime. I put overtime as the younger co-workers did. I
did contribute to Schedule F equally, because each of us
handled different aspects of the Schedule F.
Mr. DETRAGLIA: Okay. If we can mark Exhibit
J, please.

72

(Defendant Exhibit J marked for
Identification.)
Q. Can you take a look at exhibit J and let me know

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.72

when you are finished?
A. Okay.
Q. Could you describe what that document is, please?
A. This is Michael Evolo's performance response dated
June 8, 2004. It's in response to my response, which I gave
to him on June 7th and ties with the performance discussion on
May 11th, and Michael Evolo is offering the following
commentary. And basically, it's a reiteration of what was put
in the May 11th performance review.
Q. Do you believe the items listed in this document,
then, are inaccurate?
A. one of them, yes.
Q. which one is that?
A. "We sent you to Access training last year."
Q. You didn't have Access training in the year 2003?
A. No, I took it in '91, '92.
Okay. Anything else inaccurate?
Michael Evolo refers here to comments from both
internal and external customers. There were occasions when I

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.72-73

23 asked for examples. I was never provided with the examples.
24 The company had me take the harassment test, which basically
25 profiled how the traits of my personality can benefit the job,

73

1 if it's compatible or not. The tests how the traits, both
2 strong and weak. The comments and the response are not
3 consistent with the harassment review about my personality
4 traits. I would like to add one thing here in regard to
5 part-time employment, "If you have a conflict with Fleet, you
6 must take it up with them." I mentioned before that my
7 co-workers had the flexibility with the overtime. This was
8 the one instance when I asked if on a Saturday – it was the
9 last Saturday in January, that instead of the morning, if I
10 can come in the afternoon. And the immediate response – it
11 was in front of David Raga and Josh Watkins, Mr. Evolo's

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.73-74

immediate response was, "You may have to call them sick." The related accident report is the report that I mentioned earlier, that I was unable to accomplish the tasks, even though related accident claims were handled by Josh and David. I successfully created report for the very first time from the database of about ten thousand records or so and selected the items that Michael wanted to put in. I have never done it before, so that was completed successfully. In this response, again, it's in my review, it's inaccurate statement, so Michael Evolo is using a very biased – is very subjective. He basically presents his point of view. It is not an objective evaluation.

(A brief recess was taken.)

(Defendant's Exhibit K was marked for

74

Identification.)

Q. If you could please take a look at that document and

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.74

let me know when you are done reviewing it.
A. I did review it.
Q. And what is that document?
A. This is the evaluation of my performance prepared by
Michael Evolo on July 22, 2004. It's an annual review.
Q. In your opinion, is this a biased review of your job
performance?
A. In my opinion, yes.
Q. And can you briefly describe how so?
A. This is the first review that I received after
fourteen years of the positive, "Meets or exceeds" review, the
rating. It's a positive, the one a year earlier prepared by
Michael Evolo. It's rated "Does not meet the job
expectations. " It has the subjective statements I saw on the
pages here, "To my disbelief" and "My opinion." "To my
disbelief, she began working on the project immediately."
This goes with the statement in regard to the PROCEDE
assignment. And in this evaluation, Michael recommends that I
try pursuit of the ARe designation r right away,

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.74-75

and after I
failed it in November '03, it is recommended that I try it
right away, and he states, "This was not done and reflects her
lack of interest and commitment." I did explain that I would
sign up later in that year. The working relationship is

75

evaluated "Good" a year earlier to the lowest score. I am not
aware of a situation where my behavior was disruptive to the
entire department. Michael stated that, "I have explained to
her that I will not tolerate another occurrence. I will
initiate formal disciplinary action should this occur. I have
spoken to a number of Grazyna's external customers and some of
them expressed similar concerns for her abrupt tone and tenor
and her unwillingness to be flexible." Those are not correct
statements.
Q. And on the pages seven, eight and nine, are those a

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.75,78

11 performance plan of action?
12 A. The entire performance review is prepared by Michael
13 Evolo, yes, and that's what he put in the plan of action and
14 objectives.
15 Q. And on page ten, those are his additional; comments?
16 A. Yes.
17 Q. And then, you began writing employee comments and it
18 says: "Continued on another page"?
19 A. Correct, and there were fifty-nine of them.
20 Q. Let me just make sure that – the date of 7/22/04 at
21 the bottom of page ten, what happened on that date?
22 A. It was the date of the performance review.
23 Q And you respond with a fifty-nine page response?
24 MR. DETRAGLIA: I'm going to go ahead and mark
25 it. It's in. We'll have that be "L."

78

1 memorandum?
2 A. To my best recollection, I did it in November, the
3 day before my surgery, when I sent an e-mail with an

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.78

attachment to Mike Evolo.
(Defendant's Exhibit N marked for Identification.)
Q. If you could look at Exhibit N and let me know if you recognize that.
A. Yes, I do recognize it. This was the reply for the comments about my performance review sent electronically to Michael Evolo, written by Nina Owens in Human Resources, commenting on my response – the fifty-nine page response, in August 2004.
MR. BERG: Is this an e-mail?
THE WITNESS: Yes, and this is an attachment to the e-mail.
(Defendant's Exhibit O marked for Identification.)
Q. Do you recognize exhibit O?
A. Yes.
Q. What is it?
A. A memo prepared by Michael Evolo in response to my memo dated November 10. This was presented to me in the meeting in person by Michael Evolo and Dane

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.78-79

Austin. Dane
25 Austin told me to consider it a formal probation, the memo

79

1 included the follow up in thirty days.
2 Q. And do you remember actually receiving that
3 document?
4 A. It was handed to me in the conference room, in
5 person.
6 Q. Who else was in the room?
7 A. Michael Evolo and Dane Austin.
8 Q. Anyone else?
9 A. No. This was handed to me a week after I came back
10 from the disability.
11 Q. Did you prepare a written response to that January
12 6, 2005 memo?
13 A. Yes.
14 (Defendant's Exhibit P marked for
15 Identification.)
16 Q. Could you take a look at Exhibit P and let me know
17 if you recognize it?
18 A. Yes. This is the response to the warning handed to
19 me by Dane Austin on January 6th. It is dated

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.79-80

February 4th,
which was, I believe Friday, if I recall well. I know exactly thirty days would fall on the weekend, so I dated it the business date. It has attachments showing the actual facts about the statement in the memo handed to me on January 6th.

Q. Now, did you deliver this to anyone, Exhibit P?

80

A. On February 21st, I received a call at ten in the morning from Michael Evolo to step into the Human Resources. I grabbed the folder. I had the response with me. The follow-up meeting never took place. I was carrying it with me waiting for the chance to discuss, and I handed it to Nina, to Dane, one copy each, and one to Michael Evolo. I also handed them the complimentary e-mail from Shawn Douglas, the auditor from Price House Water Cooper, which I received on Friday, the last Friday before Monday, praising me on the excellent job I

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.80-81

did with preparation of the documents for the audit.
Q. Meaning the Friday previous, meaning approximately
February 18th of 2005?
A. Yes. Saturday was the 19th. It was the last
Saturday I worked late at night.
Q. Was there a reason you didn't deliver this document
around the time that it's dated, as of February 4th, 2005?
A. I followed up with Michael Evolo a couple of times on
the follow up meeting, questioning when it will take place,
and basically, it was pushed over and never took place. The
answer was "next week," and next week was the Monday, the
21st.
Q. Why didn't you just give it to him after you
finished it around February 4th?
A. I hoped that we could discuss it. I put on the last
line that I feel confident that if someone took a look at the

81

attached, it would help to put things into perspective. So

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.81

this was my attempt to basically be heard in this case, by the company, to present the issue and present the injustice that is happening. Dane Austin was the new Director of Reinsurance, who replaced Rick Beidleman. He started his duties as of December 1st. I was out on disability, and I really never worked with Dane Austin, never talked to him. He never got a chance to evaluate my performance, so I wanted to basically have a chance to, once again, to try to bring it to somebody's attention.

Q. Is what you're saying is that you wanted somebody on read this?

A. I wanted to discuss it, to show that the statements that are made in the previous nine-months' evaluation, the annual, the follow-up memo, the probation, the 1/6/05 memo, they are not accurate or they are biased.

Q. Okay. The last line you said, "If someone moment to look at the attached, it would help to

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.81-82

put things in
19 perspective." Why didn't you give this to Mr. Evolo, Mr.
20 Austin or Ms. Owens around February 4th, so they would have a
21 chance to look at it?
22 A. I thought it may end up the same way as my request
23 in August of 2004. The issue of my performance review in 2004
24 and lack of raise and does not meet evaluation, that was
25 supposed to go higher than Human Resources, directly to the

82

1 CEO of the company.
2 Q. Could you just explain that further, please?
3 A. I was afraid that it will not take me anywhere. It
4 will be lost like the previous request to escalate my concerns
5 related to the nine-month performance review, the annual
6 performance review in 2004.
7 Q. So you decided you would prefer to hand-deliver it?
8 A. I wanted to discuss it in person when we speak. The
9 date was set up thirty days after the January 6th

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.82

to follow
10 up, and I anticipated the follow up meeting and I wanted to go
11 over it. When I escalated the issue in August of 2004, to
12 Rick Beidleman, at Michael's recommendations to keep in mind
13 the job ramifications if I go above and I bypass them, it
14 really didn't take me anywhere. It wasn't addressed by the
15 company.
16 Q. Can you just flip to the last few pages? Can you
17 recall if – did you attach the January 6, 2005 memo and the
18 August 2004 memo – did you attach those to the back of this
19 document, P?
20 A. To my best recollection, the August memo was part of
21 what was given to me on January 6th.
22 Q. And is that your handwriting on the January 6th
23 memo, near the end of this Exhibit P, the numbers one and
24 four?
25 A. Yes, that's what basically was the reference, where

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.83

I put number one and number two. There should be also four five, six, seven, eight.

Q. Again, was this another attempt by you to show that you believed Mr. Evolo's evaluations were biased?

A. in my opinion, they were biased and inaccurate.

Q. Was preparing this Exhibit P your way of informing the company why you believed it was biased?

A. Those are the facts that backed up my statements. It's not a speculation, those are the facts, the copies of the memos or the tasks that I completed relevant to the statement in the January 6 memo, which showed the bias, the different treatment.

(Defendant's Exhibit Q marked for Identification.)

Q. Could you look at Exhibit Q and let me know if you're familiar with that?

A. Yes. This was part of the documentation I received from the Division of Human Rights.

Q. Now, is it your understanding that the five

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.83-84

bullet
20 point items were mistakes or errors on your part
21 while you were an employee?
22 A. Those are incorrect and inaccurate statements.
23 Q. Are any of them correct, in your opinion?
24 A. I did address them in the rebuttal, one
25 pertinent to the premium for payment from Berkley, and I

84

1 addressed the Commerce Survey. I did not address the other
2 three. I just made a comment that they all are not backed up
3 by the documentation included.
4 Q. What do you mean by that, that the other three are
5 not backed up by the documentation?
6 A. I did not elaborate on all three of them. I just
7 chose two examples, the first two, to show that they are not
8 accurate. The Commerce Survey was reported incorrectly, one
9 of the statements. The premium was reported year-to-date and
10 should have been quarterly. The Commerce Survey required
11 earned premium, which cannot be on a quarterly

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.84-85

basis.
According to the formula, the earned premium is calculated as
of the year-to-date. Otherwise, it would be reported on a
written basis, not earned, and I explained that in the
rebuttal.
Q. And when you say "the rebuttal," that was in the
rebuttal you submitted to the Division of Human Rights?
A. Correct.
Q. The third bullet point regarding Swiss Re contingent
commission calculations, this Exhibit Q says it was done
incorrectly. Is this a true statement?
A. I am not aware of that. If I may add, those
statements were made after I was fired, because the memo is
dated June 28th and looks like it's an e-mail sent to Nina
Owens.

85

Q. Well, I'm wondering, do you know if they were done
correctly?
I inherited the Swiss Re contingent commission as

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiffs Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.85

one of my responsibilities when we moved to Michael Evolo's department, and to my knowledge, everything as set up correctly.

Q. And the fourth bullet point, do you know if there were any errors in the ceded commission regional office allocations as set forth in the fourth bullet point?

A. That particular line refers to details for the journal entry. The surety quarter share settlement was my responsibility, and I was preparing the information for David Raga, and what I did, if I recall it well, instead of putting a credit, I put a debit in parenthesis, or something to that affect, or it would have been the issue of rounding of one penny, which I don't recall exactly at this point, but it was a very minor situation.

Q. the last bullet point, are you familiar with the write-offs on account reconciliations for the reinsurance payable and reinsurance clearing accounts? Do

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.85-86

you know what
those are?
A. I did handle the reinsurance payable, and the
clearing account was used to make sure the payment go through
whenever we cut the checks or sent payment electronically.
Everything was going – all the contracts paid were going in

86

that account, and they were my responsibility, I have no
recollection of what were the items I didn't complete
Mr. BERG: Ms. Grazyna, this is Stefan Berg talking. Have I reviewed with you Plaintiff's Response to Defendant's First Set of Interrogatories?
THE WITNESS: Yes.
MR. BERG: Are the answers set forth in there the answers that you would have set forth if you had
done these yourself and not I?
THE WITNESS: Yes.
MR. DETRAGLIA:And we will mark that as R.
(Defendant's Exhibit R and S marked for Identification.)
MR. BERG: Ms. Christman, Stefan again

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.86

speaking. I have shown you Defendant's Request for Documents and Plaintiff's Response to Defendant's Request and I have reviewed with you the responses put forth. Are the responses which I have put forth in Plaintiff's Response to Defendant's First Set Request for Documents the answers you would have put forth if you had done them yourself?

The WITNESS: Yes.

(Defendant's Exhibit T marked for Identification.)

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Errata to Transcript Christman
Exhibit 14, p.1

EXAMINATION BEFORE TRIAL of the Plaintiff, GRAZYNA H. CHRISTMAN, taken by the Defendant, UTICA NATIONAL INSURANCE GROUP, INC.

ERRATA SHEET

Page	Line	CURRENTLY	SHOULD BE
4	18	2003	2004
4	20	May 11	June 6
6	5	Miss	Mrs.
20	11	Natural Arts and	Master of Arts in
24	16	opened a complained	openly complained
27	2	Raynacha, R-A-Y-N-A-C-H-A	Rayancha, R-A-Y-A-N-C-H-A
28	12	or	and
34	10	, that	and
40	25	scheduling	scheduling of surgery
49	9	wall	ceiling
53	15	an	from
54	13	really	was
54	14	try	was trying
54	15	that experience	the employment
54	21	Raynacha	Rayancha
57	7	Raynacha	Rayancha
56	9	Raynacha	Rayancha
56	17	months	weeks

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Errata to Transcript Christman
Exhibit 14, p.1-2

25	56	18	months	weeks

1

	Page	Line	CURRENTLY	SHOULD BE
2	57	5	work	worked
3	60	10	stability	flexibility
4	60	12	it right away were made	them right away
5	60	14	in	to defendant's
6	63	1	to	in comparison to
7	64	25	is	was
8	65	25	'91	'01
9	66	1	'92	'02
10	68	7	Sunday	Saturday
11	70	6	"non"	"none"
12	70	11	asked help	asked for help
13	71	21	as	same as
14	72	19	'91, '92	'01, '02
15	72	24	harassment	Harrison
16	73	3	harassment	Harrison
17	73	14	unable	able
18	73	19	so that	and it
19	74	12	first	first" does not meet"
20	74	13	review	reviews
21	74	25	is	which was
22	75	1	to	is downgraded
23	79	1	included	stipulated
24	80	7	Shawn	Shaunastar
25	83	10	statement	statements

2

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Errata to Transcript Christman
Exhibit 14, p.3

Page	Line	CURRENTLY	SHOULD BE
84	3	included	included in my rebuttal
85	15	affect	effect

s/
Grazyna H. Christman

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 49-3
Plaintiff's Opposition to Defendant's Cross-Motion for Protective and Confidentiality Order Filed 09/02/08
Defendant's Termination Notes
Exhibit 109

From: Michael Evolo/UNIG,<Michael Evolo/UNIG@unig>
To: Nina Owens/UNIG
Subject: Grazyna Christman
Date: 02/21/2005 12:03:40 PM

Attachment N1: Grazyna February 2005 additional concern.doc

Nina,
These are the notes I took from this mornings' meeting with you, Dane and Grazyna.
Purpose of the meeting was to terminate Grazyna's employment at Utica National.
I reviewed the lack of noticeable improvement in her performance since the meeting Dane and I had with her on January 6, 2005.
I mentioned that Year End processing was a critical time for us and that there were a number of instances where she provided incorrect accounting information to others and that these errors were unacceptable and below standard. I went on to say that I gave her every opportunity to improve her performance and that she has not done so.
I wrapped up my conversation by saying that we reviewed her lack of performance with HR and that we decided to terminate her employment immediately and that the decision was final.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 49-3
Plaintiff's Opposition to Defendant's Cross-Motion for Protective and Confidentiality Order Filed 09/02/08
Defendant's Termination Notes
Exhibit 109

Grazyna handed out what she claimed was a formal response to our January 6th meeting. In addition, she made some remarks: namely that she has been under tremendous pressure from the work environment; admitted committing some errors; has never received any help from her co-workers; she claimed to have simplified many of her job tasks since coming to Reinsurance Department; and, in the last 30 days she claimed that she completed her job tasks on time.
Attached is the most current iteration of the source document listing her deficiencies.

Michael S. Evolo, CPCU, ARe
Supervisor of Reinsurance Operations
Utica National Insuranc Group
315.734.2544
800.274.1914 Ext. 2544
Fax - 315.734.2662

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 02/04/05 Memo
Exhibit 81

To: Michael Evolo, Reinsurance
Dane Austin, Reinsurance
Cc: Nina Owens, Human Resources
From: Grazyna Christman, Reinsurance
Date: 02/04/2005
Subject: 01/06/2005 Meeting

I would like to thank Mike and Dane for their time to meet with me and submit the essential documentation to the following:

1) Tammy suggested that I contact IT person about HSB problem and I had complied with it. Before my medical leave last November I asked Mike for help with Tammy's inappropriate comment.
2) To my knowledge PWC auditors were looking for the third quarter reconciliations. I finished them before my surgery and left with Senior Accountant on 11/09/04. I forwarded the second quarter reconciliations to Finance on 08/17/04. I took the full day vacation in place of previously scheduled quarter day due to unexpected personal circumstances. It was approved by Rick and I was not aware of any deadline. Otherwise I would have not taken it.
3) I explained via e-mail to Martha how I handled the annual Surety premium adjustment, asked her for guidance how to correct and provided her with the revised adjustment memo.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 02/04/05 Memo
Exhibit 81

4) The original ERPL block was removed in September. In the e-mail to Martha John explained the circumstances, which delayed premium processing. He also run manual premium bordereaux. I submitted them to Gen Re along with premium payment within time frame stipulated by contract. There was no way for me to recognize that another block prevented October premium processing normally run in November and discovered while I was recovering from surgery.
5) Swiss Re address labels for premiums and reserves bordereaux were in the file, along with Pia's communication, which indicated that reserve reports should be mailed to another person.
6) The journal details for JPW Surety Quota Share incoming wires were easily retrievable from Surety folder. Each quarter settlement in that file indicated the net amounts due from (or to) each participant, broken down further by premium, commission and losses ceded amounts, all of which are essential components to journalize a cash payment received from JPW via wire transfer.
7) I sent 11/09/04 e-mail incorrectly as a result of overwhelming duties, including year-end task, which Mike assigned to me to be finished before my surgery.
8) I indicated debits and credits for 9/22 wire, but

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 02/04/05 Memo
Exhibit 81

inadvertently typed credits in the incorrect column.

I continuously strive to complete my tasks in a timely and accurate manner and I should not be held responsible for actions of others. I have taken Mike's suggestion not to use e-mails as a communication tool and adopted them to promote face to face interactions with my co-workers. Any time I was asked to help with or handle a task, I have done so willingly and without resistance. I am willing to improve further my efforts toward creating a harmonious relationship with my co-workers. However, the nature of good human relationship implies mutual consideration. I feel confident that if someone took a moment to look at the attached, it would help to put things in perspective.